TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1916

No. [redacted] 169

THE UNITED STATES, APPELLANT,

vs.

PRINCE LINE, LIMITED, PAUL F. GERHARD, CHARLES F. GERHARD, FRANCIS J. ZIMMERMAN ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

VOLUME 7.

PLEADINGS, ETC.

FILED JUNE 16, 1916.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 518.

THE UNITED STATES, APPELLANT,

vs.

PRINCE LINE, LIMITED, PAUL F. GERHARD, CHARLES Z. GERHARD, FRANCIS J. ZIMMERMAN ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUHTERN DISTRICT OF NEW YORK.

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1 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, ET AL., DEFENDANTS.

Praecipe. In Equity, 9–201.

ALEXANDER GILCHRIST, JR.,
Clerk, U. S. District Court,
Southern District of New York.

You will please take notice that the portions of the record to be incorporated in the transcript on the appeal of the petitioner, represented by the undersigned, are as follows:

1. Petition.
2. Answers of the defendants.
3. General replications.
3a. Affidavit of Stanley D. Montgomery and order thereon.
4. Record used in District Court.
5. Decision of court on hearing of facts in the record.
6. Decree of March 17th, 1915.
7. Final decree of the court of May 17th, 1915.
8. Proceedings after decree.

Dated New York, May 25th, 1915.

H. SNOWDEN MARSHALL,
U. S. Attorney, office and post-office address, Room 202, U. S. Court House and Post Office Building, Borough of Manhattan, City of New York.

ERNEST E. BALDWIN,
Special Assistant to the Attorney General, 42 Broadway, Manhattan Borough, New York City.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed May 26, 1915.

2 PETITION.

United States District Court, for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
v.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS.
} In Equity.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, sitting in equity:

The United States of America, by Henry A. Wise, its attorney for the Southern District of New York, acting under direction of the Attorney General of the United States, brings this proceeding in equity for relief under the provisions of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the Acts amendatory

thereof, against Prince Line, Limited, James Knott, Paul S. Gerhard, Francis J. Zimmerman, Charles E. Gerhard, Harry Connor, Walter Holland, Arthur Cook, George Melly, C. Sydney Jones, Frederick T. Busk, Lorenzo Daniels, William Gein, Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft, William G. Sickle,
3 Paul Gottheil, Thomas A. Sparks, Wilhelm Voelkens, H. W. Voelkens, W. L. Walter, Robert H. Goodwin, Clement H. Betts, Henry H. Garvan, and Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft, and on information and belief alleges and shows:

I.

OBJECT OF THE ACTION.

The above named defendants, Prince Line, Limited, Walter Holland, George Melly, Arthur Cook and C. Sydney Jones, Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft and Hamburg-Südamerikanische Dampschifffahrts-Gesellschaft, are engaged in foreign trade and commerce as common carriers of passengers and freight, between ports in the United States—particularly the port of New York—and ports in the Republic of Brazil, and in respect to said foreign trade and commerce, all of the defendants herein have been and are now violating the provisions of the Act of Congress, passed July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and the Acts amendatory thereof and supplemental thereto, as will hereinafter more fully, and at large, appear.

This proceeding is instituted to restrain the defendants from continuing the unlawful combination and conspiracy, hereinafter described, to monopolize and restrain trade and commerce in the carriage of freight and passengers between the ports of the United States on the Atlantic Coast and Mexican Gulf and the ports of Brazil, from further acting under the unlawful contracts and agreements hereinafter described, adopted by said defendants pur-
4 suant to and in furtherance of said unlawful combination and conspiracy and from hereafter entering into any further combination or conspiracy to monopolize and restrain said trade and commerce.

II.

DESCRIPTION OF THE DEFENDANTS AND OF STEAMSHIP LINES CONDUCTED BY THEM.

1. *Prince Line, Limited.*

(a) Defendant Prince Line, Limited, is and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain, with its principal office and place of business at Newcastle-on-Tyne, England

From some time prior to the year 1907, to the time of filing this petition, it has acted as a common carrier of freight and passengers from the Port and Southern District of New York to various ports in the Republic of Brazil, and from such Brazilian ports to the said Port and Southern District of New York, and the Port of New Orleans, in the State of Louisiana, and to other ports in the United States; and in such traffic it has at all such times maintained a regular line of steamships known as the "Prince Line;"

(b) Defendant James Knott, who is a resident of Newcastle-on-Tyne, England, has at all such times been the manager of said Prince Line, Limited, and of its said line of steamships;

(c) Defendants Paul S. Gerhard, Francis J. Zimmerman and Charles E. Gerhard, all of whom are residents of the City, State and Southern District of New York have at all such times been
5 co-partners doing business in the City and Southern District of New York, under the firm name and style of Paul S. Gerhard & Company, with an office and place of business in the City and Southern District of New York, and as such co-partners have at all such times acted as the general agents of defendant, Prince Line, Limited, in the City of New York, and as such general agents have been in charge of the conduct of all of its business and affairs in the Port and Southern District of New York in connection with its business, trade and commerce aforesaid;

(d) Defendant Harry Connor, who is a resident of the City, State and Southern District of New York, has at all such times been in the employ of said co-partnership.

2. *Lamport & Holt Line.*

(a) From some time prior to the year 1907 to the date of filing this petition, the defendants Walter Holland, George Melly, Arthur Cook and C. Sydney Jones, all of whom are residents of the City of Liverpool, England, have been co-partners doing business under the firm name and style of Lamport & Holt, and at all such times said co-partners have owned and operated a regular line of steamships upon which they have transported freight and passengers for hire, between the port and Southern District of New York and various ports in the Republic of Brazil, and between said Brazilian ports and said port of New York and the port of New Orleans, in the State of Louisiana. This line of steamships is known and will hereinafter be referred to as the "Lamport & Holt Line."

(b) Defendants Frederick T. Busk and Lorenzo Daniels, both of whom are residents of the City, State, and Southern District of New York, have at all such times been co-partners doing business
6 in the City and Southern District of New York, under the firm name and style of Busk & Daniels, with an office and place of business in the City and Southern District of New York, and at all such times have been the general agents in the City and Southern District of New York of said Lamport & Holt, and as such

general agents have been in charge of the conduct of all of its business and affairs at the port and Southern District of New York in connection with its business, trade and commerce aforesaid.

(c) Defendant William Gein, who is a resident of the City, State, and Southern District of New York, has at all such times been in the employ of said firm of Busk & Daniels.

3. *Hamburg Lines.*

(a) Defendant Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the Empire of Germany, with a principal office and place of business at Hamburg, Germany.

(b) Defendant Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the Empire of Germany, with a principal office and place of business at Hamburg, Germany.

(c) From some time in the year 1907 to the time of filing this petition, the two last named corporations have jointly owned and operated a regular line of steamships for the carriage of passengers and freight from the port and Southern District of New York to various ports in the Republic of Brazil, and from such Brazilian ports to the port and Southern District of New York and
7 the port of New Orleans, in the State of Louisiana. This line of steamships has at all such times been known and hereinafter will be referred to as the "Hamburg Lines."

(d) Defendant William G. Sickel, who is a resident of the City, State, and Southern District of New York, has at all such times been the assistant to the general manager in the United States of the defendant Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft.

(e) Defendants Paul Gottheil, Thomas A. Sparks, Wilhelm Voelkens, H. W. Voelkens (whose first name is unknown) and W. L. Walter (whose first name is unknown) have at all such times been co-partners doing business in the City, State and Southern District of New York under the firm name and style of Funch, Edye & Company, with an office and place of business in the City and Southern District of New York; and at all such times said defendants have acted as the general agents of defendants Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft and Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft in the United States, and as such general agents have been in charge of the conduct of all the business and affairs of said companies at the port and Southern District of New York in connection with their business, trade and commerce aforesaid.

(f) Defendants Robert H. Goodwin, Clement H. Betts and Henry H. Garvan, all of whom are residents of the City, State and Southern District of New York, have at all such times been employees of the co-partnership of Funch, Edye & Company, aforesaid.

8

III.

DESCRIPTION OF THE TRAFFIC BETWEEN THE UNITED STATES AND BRAZIL.

The only practicable routes for the carriage of passengers and freight from the United States of America to the Republic of Brazil, and from the Republic of Brazil to the United States, are all-water routes on the Atlantic Ocean, between ports on the Atlantic Coast and the Mexican Gulf in the United States, and ports on the Atlantic Coast in Brazil. Substantially all of the commerce of the United States of America with the Republic of Brazil, both export and import, is carried by steamships over said routes. At all the times herein mentioned, the defendant carriers have been engaged in the carriage of freight and passengers over such routes, and have maintained and operated their aforesaid steamship lines with regular dates for the departure of their ships from the port of New York to Brazilian ports, and from Brazilian ports to the ports of New York and New Orleans, but with no regular service from the port of New Orleans to Brazilian ports. During all of said period, no other port on the Atlantic Coast of the United States nor on the Gulf of Mexico has been regularly reached by any line running to or from Brazil. In said traffic between the United States and Brazil said defendant carriers are natural competitors in the business of furnishing facilities for the transportation of freight and passengers between the ports aforesaid and but for the existence of the unlawful combination and conspiracy and the unlawful contracts and agreements made in furtherance thereof, hereinafter set forth, said defendant carriers would be actively competing with one another in said trade and commerce.

9

IV.

THE COMBINATION AND CONSPIRACY IN WHICH THE DEFENDANTS ARE ENGAGED.

The defendants for five years last past have been continuously and now are engaged in the United States, and particularly in the Southern District of New York, in an unlawful combination and conspiracy, unreasonably and directly to restrain a part of the trade and commerce of the United States with foreign nations, and to monopolize the same, that is to say: They are and for five years last past continuously have been engaged in said Southern District of New York in a combination and conspiracy to destroy all compe-

tition among and between themselves in the business of transporting passengers and freight by steamships between ports in the United States of America and ports in the Republic of Brazil, and particularly between the port of New York, in the Southern District of New York, and ports in the Republic of Brazil, and to eliminate, suppress and destroy all competition in such trade and commerce by any and all persons and corporations other than themselves; and at all such times they have been continuously and now are so combining and conspiring to monopolize, and in fact, do now monopolize such trade and commerce.

10

V.

MEANS AND METHODS USED TO ACCOMPLISH THE OBJECTS OF THE COMBINATION AND CONSPIRACY.

To restrain trade and effect a monopoly in the above described foreign commerce the defendants have adopted measures to eliminate competition among themselves and to destroy and prevent the competition of others. Many of the means and methods so used are in detail as follows:

1. *Traffic Agreement.*

In furtherance of and pursuant to the aforesaid unlawful combination and conspiracy, and to effect the object thereof, defendants Walter Holland, Arthur Cook, George Melly and C. Sydney Jones, composing the firm of Lamport & Holt, defendant Prince Line, Limited, defendant Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft and defendant Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft, on the 14th day of February, 1908, at the City of London, England, entered into a written agreement, a copy of which is hereunto annexed and marked Exhibit 1, and here prayed to be considered as a part hereof, as if here set forth in full, which will hereinafter be referred to as the "Traffic Agreement." Thereafter continuously to the date of filing this petition, all of the defendants herein named, in furtherance of and pursuant to the aforesaid unlawful combination and conspiracy, and to effect the object therof, have been and now are co-operating with one another to carry into effect the terms and provisions of said agreement, and each and all of the individual defendants herein named and de-
11 scribed as residents of the Southern District of New York, have at all times since the making of said agreement, as above stated, conducted their respective affairs in accordance with the terms and provisions therein contained.

Among other things, said Traffic Agreement provided:

(a) For fixing the total number of sailings and apportioning them among the said lines;

(b) For the withdrawal of the steamships of the Hamburg Lines then engaged in the traffic from Brazilian ports to the port of New Orleans and that the defendant proprietors of the Lamport & Holt Line should conduct all such traffic;

(c) For a system of rebates to shippers who confined their shipments to the lines of the defendants and lines which any of the defendants might be in combination;

(d) For a tariff of rates for the carriage of freight in the trade and commerce aforesaid and be adhered to by each of the lines.

2. *Pooling Agreement of* 1908.

In furtherance of and pursuant to the aforesaid unlawful combination and conspiracy, and to effect the object thereof, the defendants Walter Holland, Arthur Cook, George Melly and C. Sydney Jones, composing the firm of Lamport & Holt, and defendants Prince Line, Limited, Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft and Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft, on the 8th day of July, 1908, entered into a written agreement, a copy of which is hereto attached and marked Exhibit 2, and prayed to be considered as a part hereof, as if here set forth in full, which will hereinafter be referred to as the "Pooling
12 Agreement." Immediately thereafter, and continuously until the 30th day of June, 1909, all of the defendants herein named, in furtherance of and pursuant to the aforesaid unlawful combination and conspiracy, and to effect the object thereof co-operated with one another to carry into effect the terms and provisions of said agreement, and each and all of the individual defendants herein named and described as residents of the Southern District of New York, within the time aforesaid, conducted their respective affairs in accordance with the terms and provisions therein contained.

Said agreement was terminated under the terms of a notice given by the defendant proprietors of the Lamport & Holt Line, a copy of which is hereto attached and marked Exhibit 3 and prayed to be considered as a part thereof as if here set forth in full.

Among other things, said Pooling Agreement provided that:

(a) The Lamport & Holt Line, the Prince Line, Limited, and the Hamburg Lines should each receive one-third of the aggregate profits earned by all three of said lines on freight carried in the trade and commerce hereinbefore described;

(b) The then existing scale of steerage rates should be maintained by each of said lines in the absence of mutual agreement to the contrary;

(c) A Committee should be organized in New York, composed of the New York representatives of said lines which should co-operate with said defendant proprietors of said lines in carrying out the provisions of said agreement;

13 (d) The Agents of said lines in New York should under certain circumstances fix the rates for said lines in said traffic;

(e) A breach of said Pooling Agreement by any of said defendant proprietors should result in a penalty to such offending defendant of from one hundred to five thousand pounds.

3. *Pooling Agreement of 1909.*

In furtherance of and pursuant to the aforesaid unlawful combination and conspiracy, and to effect the object thereof, the defendants Walter Holland, Arthur Cook, George Melly and C. Sydney Jones, composing the firm of Lamport & Holt, and defendants Prince Line, Limited, Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft and Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft, in or about the month of July, 1909, the exact date being to the petitioner unknown, entered into another pooling agreement, the exact terms of which are to the petitioner unknown, but which the petitioner is informed and believes was similar in form and effect to the aforesaid pooling agreement of 1908, and petitioner is informed and believes that said agreement now is in force and operation, and that at all times from the month of July, 1909, to the date of filing this petition, all of the defendants, in furtherance of and pursuant to the aforesaid unlawful combination and conspiracy, and to effect the object thereof, have been and now are co-operating with one another to carry into effect the terms and provisions of said agreement;

4. *London Conference.*

In furtherance of and pursuant to the aforesaid unlawful combination and conspiracy, and to effect the object thereof, from the 14th
14 day of February, 1908, to the date of filing this petition, certain of the defendants have held regular meetings, periodically, at the City of London, England, which said meetings have been known to and described by defendants as the "London Conference," at which said meetings the aforesaid Prince Line, Lamport & Holt Line and Hamburg Lines have been regularly represented by certain of the defendants herein named; at these conferences the defendants then and there present, in furtherance of, pursuant to, and to effect the object of the aforesaid unlawful combination and conspiracy, have established schedules of dates for the sailings of the vessels of said lines, whereby dates have been arbitrarily fixed upon which the vessels of each of said lines should be permitted to sail to the United States from Brazil and from Brazil to the United States, and after such conferences the action there taken has been communicated to each, all and every of the defendants and said defendants and all of them have thereafter so conducted their respective business and affairs as to conform to and carry into operation the plans and schemes adopted

at such conferences, and said defendant proprietors and their representatives have at said conferences used divers other means in furtherance of said combination and conspiracy.

5. New York Conference.

In furtherance of and pursuant to the aforesaid unlawful combination and conspiracy, and to effect the object thereof, from the 14th day of February, 1908, to the date of filing this petition representatives of the aforesaid defendant proprietors of said Prince Line, Lamport & Holt Line and Hamburg Lines have held weekly meetings, known to the defendants as the "New York Conference"
15 at the City and Southern District of New York. The following defendants have attended said meetings as representatives of said lines: Arthur Cook, Lorenzo Daniels and William Gein, representing the Lamport & Holt Line, Paul S. Gerhard, Harry Connor and Charles E. Gerhard, representing the Prince Line, and Thomas A. Sparks, William G. Sickel, Clement H. Betts and Henry H. Garvan, representing the Hamburg lines. These meetings have been held at an office jointly maintained by the defendants in the Produce Exchange Building, in the City, State, and Southern District of New York. This office has been under the management and control of defendant Robert H. Goodwin, who has also acted as Secretary at said meetings and regullarly kept minutes of the proceedings thereof. At these weekly meetings the defendants then and there present have from time to time agreed upon and established rates of freight outward from New York to be charged by all of the lines hereinbefore named, for the services thereafter to be rendered by them in the trade and commerce hereinbefore described; and thereafter each, all and every of the defendants have been notified of such action, and have thereafter so conducted their business and affairs as to conform to and carry into operation the plans and schemes so adopted at such conference. At certain of said meetings the defendants then and there present have agreed upon and authorized the making of contracts by the several lines parties to such conference, as aforesaid, with particular shippers, whereby such lines were authorized to grant preferential rates to such shipers, which said preferential rates should and would be less than the regular rates established for such service at said conference, as hereinbefore stated; and thereupon each
16 of said lines so authorized to make such contracts has been notified of the action of such conference, and has thereafter so conducted its business and affairs as to conform to and carry into operation the plans and schemes so adopted at such conference.

6. Rebates.

In furtherance of and pursuant to the aforesaid unlawful combination and conspiracy and to effect the object thereof from February

14, 1908, to the time of filing this petition the defendant proprietors of said Prince Line, Lamport & Holt Line and Hamburg Lines have maintained a system of rebates by which they have sought to induce and compel shippers to confine their shipments in the trade and commerce hereinbefore described to said lines operated by said defendants. Under said system shippers, who for certain periods confine their shipments in said traffic between the United States and Brazil to said lines and who during said periods confine their shipments in all other traffic in which the defendants or any of them are engaged to the lines of said defendants or to lines with which said defendants are in combination, receive at the end of said periods rebates of ten per cent. of the amounts theretofore paid by them to said lines operated by said defendants for the carriage of freight in said traffic between the United States and Brazil. And all of the defendants herein have at all such times aided in the maintenance and operation of said system of rebates.

7. Refusals to Carry.

In furtherance of and pursuant to said combination and conspiracy and in violation of their legal duty as common carriers
17 said defendant proprietors of said Prince Line, Lamport & Holt Line and Hamburg Lines have from time to time during the existence of said combination and conspiracy sought to coerce shippers and destroy the competition of rivals by refusing altogether to carry the goods of such shippers as refused to confine their shipments in said traffic between the United States and Brazil to the said lines of said defendants and their shipments in other traffic to the lines of said defendants and other lines with whom the defendants were in combination. And all of the defendants herein have aided in said attempts to coerce said shippers and to destroy competition thereby.

VI.

RESTRAINT OF TRADE AND VIRTUAL MONOPOLY RESULTING FROM CONSPIRACY.

As a result of the combination and conspiracy hereinbefore alleged and of the various acts hereinbefore alleged to have been done by the defendants in furtherance thereof the defendants have restrained trade by eliminating competition among themselves and by destroying and rendering impracticable the competition of others and have thereby acquired a virtual monopoly of that portion of the foreign commerce of the United States which consists in the transportation of passengers and freight for hire between ports of the United States on the Atlantic Coast and Mexican Gulf and ports in the Republic of Brazil.

Said monopoly is complete, but for one small independent line, the Lloyd Brazileiro, operating steamships with infrequent sailings between Brazilian ports and the port of New York and but for a small and decreasing number of tramp steamships plying at
18 irregular intervals between ports in the United States and ports in Brazil. The sailings provided by these competitors are so infrequent and irregular that shippers who are regularly shipping goods between the United States and Brazil are obliged to employ the defendant lines for at least a portion of their shipments. The defendants are attempting to monopolize said commerce completely and by the aid of the coercive measures hereinabove described will succeed in so doing unless restrained by the decrees of your Honors.

By reason of said restraint of trade and said virtual monopoly said defendants have acquired the power to fix arbitrary and unreasonable rates for the services rendered by them in said trade and commerce and have endeavored to maintain rates at that artificial level at which said traffic so monopolized may be made to yield the highest net returns to them. By their action in fixing such rates they have deprived and are depriving the public of the benefit of the lower scale of rates for such traffic that would normally have resulted from free competition among persons and corporations engaged in such traffic and of the benefit of superior facilities for such traffic that would normally have been provided as a result of said competition.

VII.

PRAYER FOR RELIEF.

In consideration whereof, and inasmuch as petitioner can only have adequate relief in the premises in this Honorable Court, where matters of this nature are properly cognizable and relievable, your petitioner prays:

19 1. That the aforesaid unlawful combination and conspiracy and the aforesaid contracts entered into and continued by the defendants as set forth herein and each of said contracts be declared illegal and in violation of the Act of Congress passed July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the acts supplemental thereto and amendatory thereof, and that an injunction issue restraining and prohibiting the defendants and each, every, and all of them and their officers, servants, employees, attorneys, and agents from doing any act in pursuance or in furtherance thereof by the means herein described, or by any other means, and be required to desist and withdraw from all connection with the same, and that they and each of them be required and compelled to cancel and abate said unlawful contracts.

2. That the defendants and each, every and all of them, and their officers, servants, employees, attorneys, and agents be enjoined, re-

strained, and forbidden from offering or paying any bonus, rebate, or reduction of freight rates in any form or guise whatsoever in consideration or because of shippers forwarding their shipments exclusively over the lines of the defendants or some or any of them.

3. That the defendants and all and each of them, their officers, servants, employees, attorneys, and agents be enjoined and prohibited from further agreeing, combining, conspiring, and acting together to establish and maintain rules, regulations, and rates for carrying freight upon the several steamships operated by the defend-
20 ants, or any of them, between ports in the United States and ports in the Republic of Brazil in restraint of trade and commerce of the United States and with foreign nations, and from entering into, or continuing in, or doing anything in aid of any combination, association, contract, or conspiracy to deprive individuals, firms, or corporations shipping freight between points in the United States and said Brazilian ports, of such facilities and rates of freight as will be afforded by free and unrestrained competition among said defendant steamship lines or any of them.

4. That the defendants and all and each of them, their officers, servants, employes, attorneys, and agents be enjoined and prohibited from further agreeing, combining, conspiring, or acting together to injure or destroy the business of any person or corporation engaged in or who may at any time hereafter be engaged in the business of carrying freight between ports in the United States and ports in the Republic of Brazil, and from further agreeing, combining, conspiring, or acting together to monopolize the said freight traffic in the trade and commerce between the United Statets and foreign nations or any part thereof.

5. That the defendants and each of them, their officers, agents, attorneys, servants, and employees be enjoined and prohibited from entering into, or taking part in, or performing any contract, combination, or conspiracy, the object, purpose, or effect of which will be a restraint of, or a monopolization, or attempt to monopolize, trade and commerce in the transportation of freight between the United States and foreign nations, in violation of the provisions of
21 the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraint and monopolies" and the acts amendatory thereof or supplemental thereto, either by agreeing or contracting together or with one another expressly or impliedly, directly or indirectly, as to the prices at which the said service of transportation of freight shall be rendered, or as to a division of said traffic among defendants' lines or by agreeing or contracting together, or with one another, with a view to the imposition of any burden or limitation upon the service of transporting freight, or by contracting or agreeing together, or with one another, expressly or impliedly, directly or indirectly, to contribute any part of the proceeds of such transportation to any pool or general fund, or to maintain any such pool or general fund made

from such contribution for the purpose of paying rebates or otherwise controlling or attempting to restrain competition among the various lines of defendants.

6. That the defendants and each and all of them, their officers, servants, employees, attorneys, and agents be enjoined, restrained, and forbidden either to enter or clear any of their ships or vessels at the port of New York or at any other port of entry within the United States of America or any of its possessions so long as they shall continue to maintain the aforesaid unlawful combinations and conspiracies, or any other such or similar combination or conspiracy.

7. That upon the filing of this petition an injunction or restraining order be granted, restraining the defendants and each of them during the pendency of this suit in the manner expressly set forth in Paragraphs 1 to 6, inclusive of this prayer.

22 8. That your petitioner have such other, further and general relief as to this honorable Court may appear to be meet and proper.

9. To the end that each and every of said defendants may, if they can, show why your petitioner should not have the relief herein prayed for, and may, according to their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make (but not under oath, answer under oath being hereby expressly waived) to each and all matters in this petition alleged and contained, and that as fully as if the same were here repeated paragraph by paragraph and they were thereunto specially severally interrogated. May it please your honors to grant to your petitioner a writ of subpœna issuing out of and under the seal of this court, directed to said defendants and each of them, commanding them and each of them on a day certain and under a certain penalty to be therein described, to appear before your Honors in this Court, and then and there full, true, direct, and perfect answer make to all and singular the premises herein set forth, and further to stand, to perform, and abide by such further order or decree as to your honors shall seem meet, and your petitioner will ever pray.

HENRY A. WISE,
United States Attorney for the
Southern District of New York,
Solicitor for Petitioner.

GEO. W. WICKERSHAM,
Attorney General.
J. A. FOWLER,
Assistant to the Attorney General.
STANLEY D. MONTGOMERY,
Special Assistant to the Attorney General.
G. H. DORR,
Assistant United States Attorney.
HENRY A. GUILER,
Assistant United States Attorney.

23 EXHIBIT 1.

MEMORANDUM OF AGREEMENT.

Between Messrs. Lamport & Holt, of Liverpool and London, th Prince Line of Newcastle on Tyne and the Hamburg-Amerik Linie and the Hamburg-Südamerikanische Dampschifffahrts Gesellschaft, of Hamburg (hereinafter called the Hambur Lines). For the better regulation of the trade between the Unite States of America and Brazilian ports and *vice versa*. Whereby i is mutually agreed as follows.

OUTWARDS.

1. That the departures of the lines, unless otherwise mutuall agreed, shall be as follows:

Messrs. Lamport & Holt,	24	sailings	per annum.
The Prince Line,	24	do.	do.
The Hamburg Lines combined,	24	do.	do.

an itinerary covering the requirements of the various ports to b drawn up and agreed upon, the object and intention being that a excess of tonnage for any particular destination may be avoided.

2. Pending a basis for a pooling agreement being arrived at, a tar iff of rates from New York to be drawn up and strictly adhered t without any modification whatever except as they may be altered b agreement in meeting or in writing.

3. Consideration to be given to the reestablishment of a deferre rebate system on the same lines as that in force in Europe.

HOMEWARDS.

24 4. From the 1st of July, 1908, the departures of the Ham burg Lines from Brazilian ports to New York shall not exceed 24 steamers per annum and those of the Prince Line 24 steamers pe annum to New York and 12 steamers per annum to New Orleans Messrs. Lamport & Holt only to be at liberty to despatch such numbe of steamers as may suit their convenience. The Hamburg Lines t withdraw their service to New Orleans, the trade to that port to b maintained only by the steamers of Messrs. Lamport & Holt and th Prince Line.

5. The rate of freight on coffee to be fixed in conference at th highest possible level, no alteration to be made therefrom except b mutual agreement. No rebates or discounts of any kind whatsoeve to be given or allowed except such as may be provided for hereafte The rates of freight on all other articles excepting on sugar from th northern ports also to be agreed upon and adhered to.

6. A rebate system to be established on the same scale as that presently in force for Hamburg, under which all shippers will be required to confine their shipments either to the United States or to Antwerp, Rotterdam, Amsterdam, Hamburg, and Bremen to the steamers of the parties to this agreement or to other lines which may be in conference with the Hamburg Lines in their Brazil-Europe service. An agreement, if possible, also to be come to with the Royal Mail Company, the Chargeurs Reunis, or other lines under which the shipments to Havre and London may be brought within the same rebate system.

7. In the event of any of the parties to this agreement starting a service in which they have not already been engaged previ-
25 ously and by which they are entering into competition with any trade in which any of the other parties to this agreement are at present engaged it will be competent for any party whose trade may be so interfered with to withdraw from this agreement forthwith.

8. Should any unforeseen contingency arise not contemplated under this agreement the same shall be taken into consideration and, if possible, provided for.

9. Should any claim be made under this agreement by any one or more of the parties hereto in respect of any alleged breach by any other party or parties, the matter shall be referred to the decision of two arbitrators in London, one to be appointed by the party or parties claiming or objecting, as the case may be, and the other by the party or parties against whom the claim or obection is made, with power to such arbitrators to appoint an umpire, and the decision of the said arbitrators or umpire shall be final and binding upon all the parties hereto.

10. This agreement shall commence as from the date hereof and shall remain in force until the 31st December, 1913.

Dated in London 14th February, 1908.

(sg.) BALLIN. LOESER.
For THE PRINCE LINE,
(sg.) JAMES KNOTT,
Managing Director.
(sg.) TH. AMSINCK. CROPP.
(sg.) LAMPORT & HOLT.

Signed by Mr. Knott subject to the confirmation of the Prince Line board in regard to the duration clause. Failing such confirmation the agreement, so far as the Prince Line is concerned, to run
26 for one year, say, to 30th June, 1908, subject to six months' notice of termination, always expiring on 30th June in any year.

J. K. B. L. TH. A. C. L. H.

EXHIBIT 2.

New York—Brasilien.

POOL-VERTRAG AUSGEHEND.

Memorandum of agreement
made this eighth day of July, 1908,

between

Messrs. Lamport & Holt, of Liverpool and London;
The Prince Line, Limited, of Newcastle-on-Tyne;

The Hamburg-Amerika Linie, and
The Hamburg-Südamerikanische D.-G. of Hamburg.
} hereinafter called the Hamburg Lines.

whereby it is mutually agreed as follows:

1. That the parties hereto shall form a "pool" for the purpose of equalising the benefits and disadvantages in connection with the berth trade from the United States of America to central Brazilian ports, say Pernambuco, Cabedello, Maceio, Bahia, Rio de Janeiro and Santos.

2. The interest of the parties to this "pool" shall be as follows:

Messrs. Lamport & Holt one-third; The Prince Line, Limited, one-third; The Hamburg Lines one-third.

3. *Terms of charter.*—Each and all steamers despatched by the parties hereto under this agreement shall be paid a carrying rate of dollar 1.25 gold per freight ton plus allowances to cover the
27 cost of stevedoring and reception charges at New York and of handling charges in Brazilian ports as follows:

Cabedello	landed	dollar	1.60	f. f. a.	dollar	1.00
Pernambuco (inside)	"	"	2.40	"	"	1.10
Maceio	"	"	2.25	"	"	1.10
Bahia	"	"	3.00	"	"	1.25
Victoria	"	"	2.50	"	"	1.65
Rio de Janeiro	"	"	3.35	"	"	1.35
Santos	"	"	1.60			

With the exception of pieces or packages exceeding 2 tons weight, cargo of a bulky nature carried on deck, dangerous cargo, explosives, or ad valorem cargo for which 75 per cent. of the freight shall be allowed instead of the carrying rate and allowances as above.

All passage money, mail money, specie, or intermediate freight to be for owner's own account. The present scale of steerage passenger fares both ways not to be departed from except by mutual agreement.

4. *Agents' Commission Pool.*—A loading commission of 5 per cent on the net freight earned to be paid by all the lines, to their respective agents in New York, to be placed in a pool for division amongst them in equal proportions, say one-third each.

5. *Sailings.*—The above proportions of the pool are based upon a minimum of one sailing for each party per month, force majeure excepted. Any party shall be at liberty to increase their sailing up to two per month, but without increasing their share in the pool. Whatever the number of steamers despatched by the parties hereto during the year, or whatever the size of the steamers may be,
28 it is distinctly understood and agreed that each of the parties is entitled to and must be in a position to carry their proportion of cargo, and that in the case of the failure of any of the parties to supply their minimum sailings with sufficient space or their proportion of any increased tonnage that may be necessary, such party's share of the "pool" earnings shall be proportionately reduced for the benefit of the other parties.

6. *New York Committee.*—A committee to be formed in New York composed of members of the firms of agents or brokers representing the different lines, which will hold regular meetings at the appointed place. No meeting to be held without a representative of each line being present and all decisions to be unanimous excepting with regard to certain freight matters as hereinafter stated. The chair to be taken alternately by each of the parties' representatives or agents for periods as may be agreed between them.

7. Syndicate office in New York.—An office to be maintained where the committee will meet at which the accounts of the syndicate will be kept, an independent secretary being appointed to attend to the work. All accounts and manifests to be lodged as soon as possible but not later than 30 days after the departure of the steamer. The secretary to make up a monthly statement regarding all sailings of the syndicate lines in each month, showing the percentages of tonnage carried, freight earned, and amount contributed to the pool by each of the lines. A balance sheet and accounts to be made up yearly and forwarded to the principals in Europe for adjustment.

8. *Tariff.*—The existing tariff of rates to be revised as agreed upon and to be strictly adhered to without any modification whatsoever except as may be agreed upon in meeting or in writing. This
29 tariff, until mutually agreed, not to apply to the following staple articles provided they are shipped in lots of not less than 40 tons, to be engaged only at a net rate and for F. F. A. delivery abroad and without the benefit of deferred bonus, lumber, case oil, barb wire, flour, rosin, cottonseed oil, rails, plates and bars, rates of freight on which may be decided from time to time by a majority of the principals according to circumstances. In case there should be an exceptional inquiry in respect of which in the opinion of the majority of the agents there is no time to communicate with their principals a majority of the agents may decide the rate, but in that case their decision is to be immediately cabled to the principals together with the reasons for the reduction.

9. *Deferred Bonus.*—A system of deferred bonuses to be put into operation and the conditions of same to be rigidly enforced, excepting so far as regards staple articles in clause 8. This not to be operative for the present.

10. *Arbitration.*—Any dispute arising under this agreement or with reference to the interpretation of any of its clauses to be referred to the decision of two arbitrators in London, one to be appointed by the parties complaining and the other by the parties complained against, with power to such arbitrators in case of disagreement to appoint an umpire, and if they cannot agree upon one an umpire shall be nominated by the president of the Hanseatic Court of Appeal. If one of the parties fails to appoint an arbitrator within twenty-one days from notice an arbitrator nominated by the other party is to act as the sole arbitrator.

The award given by the arbitrator, arbitrators or umpire shall be final and binding upon all the parties hereto.

30 11. *Penalties.*—Any party committing a deliberate breach of this agreement shall by way of liquidated damages pay a sum of not less than £100 and not exceeding £5,000 as may be decided by arbitration as per clause 10. Obvious mistake or inadvertency not to be deemed a breach of this agreement. All penalties to be divided between the other parties in equal proportions.

12. *Notice of Termination.*—This agreement to begin as from the first of July, 1908, and to remain in force until the thirtieth of June, 1909, and to continue unaltered from year to year unless three months' notice be given by any of the lines to the other lines. No forward quotations or contracts to take effect after the termination of this agreement shall be made or entered into during the period of any notice to terminate nor shall offers of future freight at rates lower than the tariff be sought or asked for or accepted during such period.

13. This agreement is supplementary to the agreement made between the parties hereto and dated 14th February, 1908.

(Signed) LAMPORT & HOLT.
" HAMBURG-SUDAMERIKANISCHE DAMPFSCHIFFFAHRTS-GESELLSCH. CROPP.
" HAMBURG-AMERIKA LINIE.
THOMANN. pp. LOESER.
" For THE PRINCE LINE, Ltd.
" For JAMES KNOTT,
N. STOCKDALE, *Managing Director.*

31 EXHIBIT 3.

LIVERPOOL, 19 *March*, 1909.

Hamburg-Amerika Linie,
Hamburg-Südamerikanische Dampfschifffahrts-Ges.
Hamburg.

DEAR SIRS:

United States—Brazil.

With reference to the pooling agreement dated 8 July, 1909, between your Cos., the Prince Line and ourselves, we beg to give you notice as provided for under clause 12 of the said agreement to terminate the same on 30 June next. We shall, however, hope that in

the meantime we may be able to come to a fresh arrangement with your goodselves for a renewal on a more equitable basis.

Yours Truly,

(sd.) LAMPORT & HOLT.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jun. 5, 1912.

32 In the District Court of the United States, for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,	In Equity.
vs.	Answer of Prince Line,
THE PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS.	Limited.

The Prince Line, Limited, a corporation organized and existing under the laws of the Kingdom of Great Britain and Ireland, a citizen of said Kingdom, now and at all times hereafter saving to itself all benefit of exception or otherwise that can or may be taken to the errors, uncertainties, and imperfections in the Petition herein and to all or some of the subject matter set forth therein, for Answer to said Petition, or to so much of it as this defendant is advised it is material and necessary that it should answer, respectfully shows to this Court as follows:

I.

AS TO THE OBJECT OF THE SUIT.

This defendant admits that the Prince Line, Lamport & Holt, and the Hamburg Lines are engaged in foreign trade and commerce
33 as carriers, some of them of passengers and cargo, this defendant mainly as carrier of cargo, between ports in the United States, including the port of New York, and ports in the Republic of Brazil. It denies that in respect of said foreign trade and commerce the defendants herein or any of them have been or are now violating the provisions of the Act of Congress passed July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," or the acts amendatory thereof and supplemental thereto. This defendant specifically denies that its business has been or is conducted in an unlawful manner in any particular. This defendant denies that it has any knowledge or information as to the object of this suit except such as appears on the face of the Petition.

II.

DESCRIPTION OF DEFENDANTS AND OF STEAMSHIP LINES CONDUCTED BY THEM.

1. *The Prince Line.*

(a) This defendant admits that it is, and at all the times herein mentioned was, a corporation, organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ire-

land, with its principal office and place of business at Newcastle-on-Tyne, England. It further admits that from some time prior to the year 1907 to the date of the filing of this Petition it has acted as a carrier of cargo from the port of New York to various ports in the Republic of Brazil, and from Brazilian ports to the port of New York, and occasionally to the port of New Orleans; and that
34 in such trade the Prince Line has maintained a regular line of steamships.

(b) It admits that James Knott, who is a resident of Newcastle-on-Tyne, England, has at all such times been the managing director of the Prince Line, Limited.

(c) It admits that Paul F. Gerhard, Francis J. Zimmermann, and Charles Z. Gerhard, all residents of East Orange, New Jersey, have at such times been copartners engaged in business, in the City of New York under the firm name of Paul F. Gerhard & Co., and since January, 1908, have acted as the general agents of the defendant Prince Line, Limited, in New York; and that, subject to the direction of the head office of the Line in Newcastle, they have been in charge of the conduct of the company's business and affairs in the port of New York.

(d) It admits that the defendant Harry Connor has, at all such times, been in the employ of said copartnership, but denies that he is a resident of the Southern District of New York.

Except as herein admitted, this defendant denies the allegations of Paragraph I of Subdivision II of the Petition.

2. This defendant admits that Lamport & Holt, during the period that this defendant has been in the trade, has operated a regular line of steamships carrying passengers and freight between the port of New York and ports of Brazil, and that during part of such time Busk & Daniels have acted as agents in New York of such
35 Line. As to the other allegations of Paragraph 2 of Subdivision II of the Petition this defendant is not sufficiently informed to make answer thereto, and leaves the Petitioner to its proof thereof.

3. This defendant admits that, during part of the time mentioned, the Hamburg Lines have also operated steamship services between the port of New York and ports of Brazil, of which Funch, Edye & Co., have been agents. As to the other allegations contained in Paragraph 3 of Subdivison II of the Petition this defendant is not sufficiently informed to make answer thereto, and the leaves the Petitioner to its proof thereof.

III.

DESCRIPTION OF THE TRAFFIC BETWEEN THE UNITED STATES AND BRAZIL.

This defendant admits that the only practicable routes for the carriage of passengers and cargoes from the United States to the Republic of Brazil, and from said Republic to the United States, are all

water routes on the Atlantic Ocean and Gulf of Mexico, and that substantially all of the commerce of the United States with Brazil, both ways, is carried by steamships over such routes. It also admits that some of the defendant carriers, at all the times mentioned, have been engaged in the carriage of cargo and passengers over such routes, and that this defendant has been engaged mainly in the carriage of cargo over such routes, and that all the lines have been operated with relatively singular dates for the departure of their ships
from ports of New York to Brazilian ports and from Brazil-
36 ian ports to ports of New York, return voyages being occasionally made to the port of New Orleans. It further admits, to the best of its knowledge and belief, that no port on the Atlantic Coast of the United States except New York has been regularly reached by any line running to or from Brazil. This defendant denies the other allegations contained in Subdivision III of the Petition.

IV.

DENIAL THAT THE DEFENDANTS ARE ENGAGED IN A COMBINATION OR CONSPIRACY.

This defendant denies all the allegations contained in Subdivision IV of the Petition.

V.

DENIAL AS TO ALLEGED MEANS AND METHODS CLAIMED TO HAVE BEEN USED TO ACCOMPLISH THE OBJECTS OF A COMBINATION AND CONSPIRACY.

This defendant denies that in order to restrain trade and effect a monopoly, in the above described foreign commerce, the defendants have adopted measures or means to eliminate competition among themselves or to destroy and prevent the competition of others.

1. *As to traffic agreement.*

This defendant admits that on or about February 14, 1908, in order to establish and maintain a more regular steamship service and otherwise to promote and develop trade between American and Brazilian ports, it entered into a written agreement at London, England, with the other defendant carriers. It admits that Ex-
37 hibit 1 annexed to the petition is a substantially correct copy of said agreement. It admits that the defendant carriers have been and now are co-operating with one another to carry into effect certain of the terms and provisions of said agreement, but it denies that all of the terms thereof have become or are effective. But this defendant denies that the defendants or any of them have co-operated

with one another under the said agreement in furtherance of or pursuant to any unlawful combination or conspiracy. This defendant asks leave to refer to the original of said traffic agreement for the precise terms thereof, and denies the remaining allegations in Paragraph 1 of Subdivision V of the Petition.

2. *As to pooling agreement of 1908.*

This defendant admits that on or about July 8, 1908, it entered into a written agreement with certain other of the defendants therein named, of which a copy believed to be substantially correct is attached to the Petition, marked Exhibit 2; and that thereafter until June 30, 1909, the parties to the said agreement co-operated with one another to carry its terms and provisions into effect. This defendant further admits that the said agreement was terminated under the terms of a notice given by the defendants Lamport & Holt, and that Exhibit 3 attached to the Petition is a copy of the notice by which the agreement was terminated. For the terms and provisions of said agreement this defendant asks leave to refer to the original thereof, and it denies the remaining allegations contained in Paragraph 2 of Subdivision V of the Petition.

38 3. *Alleged pooling agreement of 1909.*

This defendant denies each and every allegation of Paragraph 3 of Subdivision V of the Petition.

4. *London Conference.*

Upon information and belief this defendant denies the allegations contained in Paragraph 4 of Subdivision V of the Petition.

5. *New York Conference.*

It admits that during the principal part of the period from February 14, 1908, to the date of the filing of this Petition representatives of the Prince Line, the Lamport & Holt Line and Hamburg Line held weekly meetings in New York under the name of the "New York Conference," and that at various times the defendants mentioned in Paragraph 5 of the Petition (except Arthur Cook) attended such meetings, in an office jointly maintained by the carrier defendants in The Produce Exchange Building in the City of New York, but it denies that Robert H. Goodwin acted as secretary at such meetings or kept records thereof. It admits that the representatives of the carrier defendants, as agents for such defendants, and within limits prescribed by their respective principals, have agreed from time to time on rates of freight to be charged on certain staple articles outward bound from New York. It admits that its

business and affairs were conducted so as to conform to and carry into operation freight rates agreed to be charged so far as adopted by the carrier defendants. It denies that the persons present at
39 such meetings agreed upon and authorized the making of contracts by the several Lines parties thereto with particular shippers whereby such Lines were authorized to grant or did grant preferential rates to such shippers. It denies that preferential rates were given by any of the Lines to shippers. Except as thus admitted, this defendant denies the allegations contained in Paragraph 5 of Subdivision V of the Petition.

6. *Alleged rebates.*

This defendant denies each and every allegation contained in Paragraph 6 of Subdivision V of the Petition.

7. *Alleged refusals to carry.*

This defendant denies each and every allegation contained in Paragraph 7 of Subdivision V of the Petition.

VI.

DENIAL OF RESTRAINT OF TRADE AND VIRTUAL MONOPOLY.

This defendant denies each and every allegation contained in Subdivision VI of the Petition.

VII.

Further answering, this defendant says that a very large proportion of the commerce between the United States and Brazil is, and throughout the period mentioned in the petition, has been carried in vessels not owned or controlled by any of the de-
40 fendants. The freight rates charged between American and Brazilian ports are fixed not only in competition with other steamship lines trading between the two countries, but also in competition with lines trading from the United Kingdom of Great Britain and Ireland and the Continent of Europe with Brazilian ports. It avers that such rates are not arbitrary, but are just and reasonable and are so fixed as to enable American merchants to compete successfully in the trade both ways with merchants in the United Kingdom and on the Continent of Europe. It further avers that regularity of sailings and fairly uniform and stable rates with liberty to interchange contracts are and have been of benefit and advantage to merchants and manufacturers in the United States, and tend to develop and increase, and have developed and increased, trade between the United States and Brazil without any corre-

sponding increase in the rates of freight. It further alleges that the agreements set forth in the petition were valid under the Laws of the United Kingdom of Great Britain and Ireland, where they were made, and that such agreements have not been put into force or effect in the United States in such manner as to constitute any violation of the laws of the United States.

VIII.

PRAYER FOR DISMISSAL.

And forasmuch as this defendant, has fully answered the Petition and denied all manner of unlawful combination, con'piracy, monopoly, or attempt to monopolize, with which it is charged by the
41 Petition, and is ready and willing to aver and prove, if there be any other matter in the Petition material or necessary for this defendant to answer, which has not been well and sufficiently answered, admitted, avoided, or denied, that the same is not true to the knowledge or belief of this defendant, it respectfully prays to be hence dismissed with its reasonable costs in this behalf most wrongfully sustained.

New York, September 17, 1912.

PRINCE LINE, LIMITED,
By PAUL F. GERHARD & Co., *Agents.*
CONVERS & KIRLIN,
Solicitors for Prince Line, Limited, Defendant.
J. PARKER KIRLIN,
Of counsel.

[Filed September 19, 1912.]

42 In the District Court of the United States, for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER, *vs.* PRINCE LINE LIMITED, AND OTHERS; PAUL F. Gerhard & Co., and another, impleaded.	In Equity. Answer of Paul F. Gerhard & Co. and Harry Connor.

Paul F. Gerhard (sued as Paul S. Gerhard), Francis J. Zimmermann (sued as Francis J. Zimmerman), Charles Z. Gerhard (sued as Charles E. Gerhard), citizens of the State of New Jersey, and Harry Connor, citizen of the State of New York, saving and reserving to themselves all manner of benefit and exception or otherwise that may be taken to the errors, uncertainties and imperfections in the Bill herein, and to all or some of the subject matter set forth therein, for Answer to said Petition or to so much thereof as these defendants

are advised it is material and necessary for them to make, respectfully show to the Court as follows:

I.

AS TO THE OBJECT OF THE SUIT.

These defendants admit that the Prince Line, Lamport &
43 Holt and the Hamburg Lines are engaged in foreign trade and commerce as carriers, some of them of cargo, some of them also as carriers of passengers, between ports in the United States, particularly the port of New York, and ports in the Republic of Brazil, but they deny that the defendants or any of them herein have been or now are violating the provisions of the Act of Congress passed July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," or the acts amendatory thereof and supplemental thereto. They further deny that the defendants are engaged in any unlawful combination or conspiracy to monopolize and restrain trade and commerce in the carriage of freight and passengers between ports of the United States on the Atlantic Coast and the Mexican Coast and the ports of Brazil, or that they are parties to any unlawful agreements in connection with the said trade. These defendants have no knowledge and are not informed as to the purpose or object of this proceeding except as stated in the Petition.

II.

DESCRIPTION OF DEFENDANTS AND OF STEAMSHIP LINES CONDUCTED BY THEM.

1. *The Prince Line.*

(a) These defendants admit that the Prince Line is and at all the times herein mentioned was a corporation, organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, with its principal office and place of business at Newcastle-on-Tyne, England. They further admit that
44 from some time prior to the year 1907 to the date of the filing of this petition it has acted as a carrier of cargo from the port of New York to various ports in the Republic of Brazil, and from Brazilian ports to the port of New York and occasionally to the port of New Orleans; and that in such trades the Prince Line has maintained a regular line of steamships.

(b) They admit that James Knott, who is a resident of Newcastle-on-Tyne, England, has at all such times been the managing director of the Prince Line, Limited.

(c) They admit that the defendants Paul F. Gerhard, Francis J. Zimmerman and Charles Z. Gerhard, all residents of East Orange,

New Jersey, have at such times been copartners engaged in business in the City of New York under the firm name of Paul F. Gerhard & Co., and since January, 1908, have acted as the general agents of the defendant the Prince Line, Limited, in New York, and, subject to the direction of the head office of the Line in Newcastle, they have been in charge of the conduct of the company's business and affairs in the port of New York.

(d) They admit that the defendant Harry Connor has at all such times been in the employ of said copartnership, but deny that he is a resident of the Southern District of New York. Except as herein admitted, they deny the allegations of Paragraph 1 of Subdivision II of the Petition.

2. These defendants admit that Lamport & Holt, during the
45 period that the Prince Line has been in the trade, has operated a regular line of steamships carrying passengers and freight between the port of New York and ports in Brazil, and that during part of such time Busk & Daniels have acted as agents in New York of such Line. As to the other allegations of Paragraph 2 of Subdivision II of the Petition these defendants are not sufficiently informed to make answer thereto, but leave the Petitioner to its proof thereof.

3. These defendants admit that during part of the time mentioned the Hamburg Lines have also operated steamship service between the port of New York and ports of Brazil, of which the firm of Funch, Edye & Co. have been agents. As to the other allegations contained in Paragraph 3 of Subdivision II of the Petition these defendants are not sufficiently informed to make answer thereto, and leave the Petitioner to its proof thereof.

III.

DESCRIPTION OF THE TRAFFIC BETWEEN THE UNITED STATES AND BRAZIL.

These defendants admit that the only practicable routes for the carriage of passengers and freight from the United States to the Republic of Brazil, and from said Republic to the United States, are all water routes on the Atlantic Ocean and Gulf of Mexico and that substantially all of the commerce of the United States with Brazil both ways is carried by steamships over such routes.
46 They also admit that some of the defendant carriers at all the times mentioned have been engaged in the carriage of cargo and passengers over such routes, and that the Prince Line has been engaged in the carriage of cargo over such routes, and that all the lines have been operating with relatively regular dates for the departure of their ships from ports of New York to Brazilian ports and from Brazilian ports to ports of New York, return voyages being occasionally made to the port of New Orleans. They further admit to the best of their knowledge and belief that no port on the Atlantic Coast of the United States except New York has been regularly

reached by any line running to or from Brazil. These defendants deny the other allegations contained in Subdivision III of the Petition.

IV.

DENIAL THAT THE DEFENDANTS ARE ENGAGED IN A COMBINATION OR CONSPIRACY.

These defandants deny all the allegations contained in Subdivision IV of the Petition.

V.

DENIAL AS TO ALLEGED MEANS AND METHODS CLAIMED TO HAVE BEEN USED TO ACCOMPLISH THE OBJECTS OF A COMBINATION AND CONSPIRACY.

These defandants deny that in order to restrain trade and effect a monopoly in the above described foreign commerce the defendants have adopted measures to eliminate competition among themselves or to destroy and prevent the competition of others.

47 1. *As to traffic agreement.*

These defendants are informed that the carrier defendants, in order to establish and maintain a more regular steamship service, and otherwise to promote and develop trade between American and Brazilian ports, entered into a written agreement at London, England, on or about February 14, 1908. They are informed that Exhibit 1 annexed to the Petition is a substantially correct copy of said agreement. They admit that the defendant carriers have been and now are co-operating with one another to carry into effect certain of the terms and provisions of said agreement, but they deny that all of the terms thereof have become or are effective. But these defendants deny that the defendants or any of them have co-operated with one another under the said agreement in furtherance of or pursuant to any unlawful combination or conspiracy. These defendants ask leave to refer to the original of said traffic agreement for the precise terms thereof, and deny the remaining allegations in Paragraph 1 of Subdivision V of the Petition.

2. *As to pooling agreement of 1908.*

These defendants are informed that on or about July 8, 1908, the carrier defendants entered into a written agreement with certain other of the defendants therein named, of which a copy believed to be substantially correct, is attached to the Petition, marked Exhibit 2, and that thereafter until June 30, 1909, the parties to the

said agreement and their respective agents co-operated to
48 carry its terms and provisions into effect. These defendants further admit that the said agreement was terminated under the terms of a notice given by the defendants Lamport & Holt, and that Exhibit 3 attached to the Petition is a copy of the notice by which the agreement was terminated. For the terms and provisions of said agreement these defendants ask leave to refer to the original thereof, and they deny the remaining allegations contained in Paragraph 2 of Subdivision V of the Petition.

3. *Alleged pooling agreement of 1909.*

These defendants deny each and every allegation of Paragraph 3 of Subdivision V of the Petition.

4. *London Conference.*

Upon information and belief these defendants deny the allegations contained in Paragraph 4 of Subdivision V of the Petition.

5. *New York Conference.*

They admit that during the principal part of the period from February 14, 1908, to the date of the filing of this Petition representatives of the Prince Line, Lamport & Holt Line and Hamburg Lines held weekly meetings in New York under the name of the "New York Conference," and that at various times the defendants mentioned in Paragraph 5 of the Petition (except Arthur Cook) attended such meetings in an office jointly maintained by the carrier defendants in the Produce Exchange Building in the City of New York; but they deny that Robert H. Goodwin acted as secretary at such meetings or kept records thereof.

49 They admit that at such meetings the representatives of the carrier defendants, as agents for such defendants, and within limits prescribed by their respective principals, have agreed, from time to time, on rates of freight to be charged on certain staple articles outward bound from New York. They admit that the Prince Line's business and affairs were conducted so as to conform to and carry into operation freight rates agreed to be charged so far as adopted by the carrier defendants. They deny that the persons present at such meetings agreed upon and authorized the making of contracts by the several Lines parties thereto with particular shippers whereby such Lines were authorized to grant or did grant preferential rates to such shippers. They deny that preferential rates were given by any of the Lines to shippers. Except as thus admitted, these defendants deny the allegations contained in Paragraph 5 of Subdivision V of the Petition.

6. *Alleged rebates.*

These defendants deny each and every allegation contained in Paragraph 6 of Subdivision V of the Petition.

7. *Alleged refusals to carry.*

These defendants deny each and every allegation contained in Paragraph 7 of Subdivision V of the Petition.

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VI.

DENIAL OF RESTRAINT OF TRADE AND VIRTUAL MONOPOLY.

These defendants deny each and every allegation contained in Subdivision VI of the Petition.

VII.

Further answering, these defendants say that a very large proportion of the commerce between the United States and Brazil is, and throughout the period mentioned in the petition, has been carried in vessels not owned or controlled by any of the defendants. The freight rates charged between American and Brazilian ports are fixed not only in competition with other steamship lines trading between the two countries, but also in competition with lines trading from the United Kingdom of Great Britain and Ireland and the Continent of Europe with Brazilian ports. They aver that such rates are not arbitrary, but are just and reasonable and are so fixed as to enable American merchants to compete successfully in the trade both ways with merchants in the United Kingdom and on the Continent of Europe. They further aver that regularity of sailings, and fairly uniform and stable rates, with liberty to interchange contracts, are and have been of benefit and advantage to merchants and manufacturers in the United States, and tend to develop and increase, and have developed and increased, trade between the United States and Brazil without any corresponding increase in the rates of freight.

51 They further allege that the agreements set forth in the petition were valid under the Laws of the United Kingdom of Great Britain and Ireland, where they were made, and that such agreements have not been put into force or effect in the United States in such manner as to constitute any violation of the laws of the United States.

Finally, these defendants allege that they are not, and have not at any time been, parties to the agreements alleged in the petition; that they have not had any interest therein as principals; that their sole connection with any business transacted in pursuance of such agreements or otherwise has been as agents employed to obtain cargoes to be loaded on board the vessels outward bound, and to attend to the loading thereof, and to the collection of the freight thereon, and to attend to the delivery of cargoes inward bound and to attend to the collection of the freights thereon, for all which services they have

been paid a commission based on the freight handled, and nothing more.

VIII.

PRAYER FOR DISMISSAL.

And for as much as these defendants have fully answered the Petition and denied all manner of unlawful combination, conspiracy, monopoly, or attempt to monopolize with which they are charged by the Petition, and are ready and willing to aver and prove, if there be any other matter in the Petition material or necessary for these defendants to answer, which has not been well and sufficiently
52 answered, admitted, avoided, or denied, that the same is not true to the knowledge or belief of these defendants, they respectfully pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

New York, September 19, 1912.

PAUL F. GERHARD,
FRANCIS J. ZIMMERMANN,
CHARLES Z. GERHARD and
HARRY CONNOR.

CONVERS & KIRLIN,
Solicitors for defendants Paul F. Gerhard & Co. and Harry Connor.

J. PARKER KIRLIN,
Of counsel.

(Filed September 19, 1912.)

53 District Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
against
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } In Equity

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of Frederick T. Busk, Lorenzo Daniels and William Gein to the petition of The United States of America herein:

These defendants, for answer to said petition or to so much thereof as they are advised that it is material or necessary for them to make answer to, severally answering, allege:

I.

DENIAL OF VIOLATION OF ACT OF CONGRESS PASSED JULY 2, 1890.

1. These defendants admit that the Prince Line, Lamport & Holt and the Hamburg Lines are engaged in foreign trade and commerce as carriers of passengers and freight between ports in the United States—particularly the port of New York—and ports in the
54 Republic of Brazil. They deny that in respect to said foreign trade and commerce the defendants or any of them are, or ever

have been, violating the provisions of the Act of Congress passed July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and the Acts amendatory thereof and supplemental thereto. And they deny that they have any knowledge or information sufficient to form a belief as to the purpose or object of this proceeding except in so far as it may appear from the allegations of the petition.

II.

AS TO THE DESCRIPTION OF THE DEFENDANTS AND THE STEAMSHIP LINES CONDUCTED BY THEM.

2. They admit that at the times mentioned in the petition the Prince Line acted as a carrier of freight between United States and Brazilian ports, and maintained a regular line of steamships; that James Knott of Newcastle-on-Tyne is the manager of said line; and that Paul F. Gerhard & Company are the agents of said line.

3. They admit the allegations contained in subdivision (a) of Paragraph 2 of Article II of the petition, except that they deny that the copartnership therein mentioned continued to the date of the filing of the petition, and they say that in the year 1911, Lamport & Holt became incorporated under the name of Lamport & Holt, Limited, and as such have operated the Lamport & Holt line of steamships.

4. They admit the allegations contained in subdivision (b) of Paragraph 2 of Article II of the petition, except that they deny that the firm of Busk & Daniels has been in existence since 1907.

55 5. They deny that the defendant, William Gein, is a resident of the City, State and Southern District of New York, and they admit that he has been in the employ of the firm of Busk & Daniels since that firm was established in 1908.

6. They admit that at the times mentioned in the petition the Hamburg Lines operated lines of steamships between United States and Brazilian ports, and that the firm of Funch, Edye & Company of New York are the freight agents of said lines.

7. As to the allegations of the remaining paragraphs of Article II of the petition they are not sufficiently informed to make answer thereto, and therefore leave the petitioner to make such proof in relation thereto as it may be advised.

III.

AS TO THE DESCRIPTION OF THE TRAFFIC BETWEEN THE UNITED STATES AND BRAZIL.

8. They admit that substantially all of the commerce of the United States of America with the Republic of Brazil is carried by steamships over the routes described in Article III of the petition, which are the only practicable routes, and that some of the defendant carriers have been engaged in the carriage of freight and passengers

over such routes, and have maintained and operated their lines with regular dates so far as practicable for the departure of their ships from New York to Brazilian ports and return, and with no regular service from New Orleans to Brazilian ports, and that no other port on the Atlantic coast of the United States, nor on the Gulf
56 of Mexico, has been regularly reached by any line running to or from Brazil. And they deny each and every other allegation contained in Article III of the petition.

IV.

DENIAL OF COMBINATION AND CONSPIRACY.

9. They deny each and every allegation contained in Article IV of the petition.

V.

DENIAL OF USE OF MEANS AND METHODS TO ACCOMPLISH OBJECTS OF A COMBINATION OR CONSPIRACY.

10. They deny that in order to restrain trade and effect a monopoly in the foreign commerce described in the petition the defendants have ever adopted measures to eliminate, destroy or prevent competition among themselves or on the part of others.

11. *As to traffic agreement.*

These defendants admit that on or about February 14, 1908, at London, the persons and corporations mentioned in Paragraph 1 of Article V of this petition entered into a written agreement, whereof a copy which they believe to be substantially correct is annexed to the petition and marked Exhibit 1, but for the terms of said agreement they beg leave to refer to the original thereof. They admit that the defendant carriers have co-operated to carry into effect certain of the terms and provisions of said agreement, but they deny that they or any of the defendants have done so in furtherance of or pursuant to any unlawful combination or conspiracy whatsoever.

57 12. *As to pooling agreement of 1908.*

These defendants admit that on or about July 8, 1908, the persons and corporations mentioned in Paragraph 2 of Article V of the petition entered into a written agreement, whereof a copy which they believe to be substantially correct is attached to the petition and marked Exhibit 2, but for the terms of said agreement they beg leave to refer to the original thereof. They admit that for a time the defendant carriers co-operated to carry into effect the terms and

provisions of said pooling agreement, and that said agreement was terminated by notice given by Lamport & Holt, a copy of which is attached to the petition and marked Exhibit 3. And they deny that they or any of the defendants acted in furtherance of or purusant to any unlawful combination or conspiracy whatsoever.

13. *As to pooling agreement of 1909.*

These defendants deny each and every allegation contained in Paragraph 3 of Article V of the petition.

14. *As to London Conference.*

These defendants deny, upon information and belief, each and every allegation contained in Paragraph 4 of Article V of the petition.

15. *As to New York Conference.*

They admit that for the greater part of the period from February 14, 1908, to the date of the filing of this petition, representatives of the Prince Line, Lamport & Holt Line and Hamburg Lines have held weekly meetings in New York under the name of the "New York Conference," and that the defendants named in Paragraph 5 of Article V of the petition, with the exception of Arthur Cook, have attended said meetings from time to time, and that said
58 meetings have been held at an office jointly maintained by the carrier defendants in the Produce Exchange Building in the City of New York, under the management of one Goodwin, as secretary, who kept records of the proceedings thereof. They deny that such meetings were held in furtherance of or pursuant to or to effect the object of any unlawful combination or conspiracy whatsoever. They admit that at the meetings of the New York Conference those present acting as agents for the carrier defendants have from time to time agreed upon rates of freight to be charged on staples outward from New York, and they say that they have recommended such rates of freight to their principals in Europe. They admit that they have conducted their business and affairs so as to conform to and carry out the plans adopted at such conferences. They deny that at any of such meetings of the New York Conference the defendants then and there present ever agreed upon or authorized the making of contracts with particular shippers whereby any lines whatsoever were authorized to grant preferential rates to such shippers and they deny that any preferential rates have been given to shippers by any of the defendants.

16. *As to alleged rebates.*

They deny each and every allegation contained in Paragraph 6 of Article V of the petition.

17. *As to alleged refusals to carry.*

They deny each and every allegation contained in Paragraph 7 of Article V of the petition.

18. *Denial of restraint and monopoly.*

They deny each and every allegation contained in Article VI of the petition.

59 19. Further answering, these defendants say that the purpose and object of the agreements entered into by certain of the defendants was to establish regular sailings and fix and maintain steady and reasonable rates to the mutual advantage of merchants and shippers and of the Steamship Lines themselves. That the rates fixed between American and Brazilian ports are fair and reasonable; are lower than the rates current twenty years ago when the United States & Brazil Steamship Company was operating a line of steamships between the United States and Brazilian ports; and are subject to the active and effective competition of Lloyd Brazileiro, a powerful company which maintains a line of steamships subsidized by the Brazilian Government, and in which the Brazilian Government has a financial interest, as these defendants are informed; further that the rates from the United States to Brazilian ports are not higher than the current rates from Europe to Brazil, so that American merchants and shippers are able to compete successfully with European houses in the export trade.

That these defendants have never attempted to create a monopoly and it would be impossible for them, or any others, to create a monopoly in the ocean traffic between ports of the United States and ports in Brazil. That a large part of the trade between the United States and Brazil is carried in bottoms not owned or controlled by any of the defendants.

That regular sailings, standard and reasonable rates, and the right to interchange contracts, so that if a steamship of one line cannot take a merchant's goods, a steamship of another line may carry out his contract, are of the greatest advantage to the merchants and manufacturers of the United States and tend to develop and increase trade between the United States and Brazil.

60 That all the agreements set forth in this petition are valid under the law of the place where they were made, as well as under the laws of the United States, and that all the acts done by these defendants are valid and lawful, and not in violation of any statute or law of the United States.

Further, that these defendants were not parties to the agreements set forth in the petition; that their only connection therewith has been as freight and passenger agents of the Lamport & Holt line in the United States.

20. And these defendants now, having fully answered the petition herein, deny all and all manner of unlawful contract, combination,

conspiracy, monopolizing or attempt to monopolize, wherewith they are charged by said petition; without this that if there is any other matter, cause or thing in the petition contained material or necessary for these defendants to make answer to and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, the same is not true to the knowledge or belief of these defendants or to any of them: all of which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

FRED. T. BUSK,
LORENZO DANIELS,
WILLIAM GEIN.

BURLINGHAM, MONTGOMERY & BEECHER,
Solicitors for above named defendants.

CHARLES C. BURLINGHAM,
NORMAN B. BEECHER,
Counsel.

(5358L)

(Endorsed:) U. S. District Court S. D. of N. Y. Filed Sep. 19, 1912.

61 In the District Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
v.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } In Equity.

To the Honorable Judges of the District Court for the Southern District of New York:

The joint and several Answer of Hamburg-Amerikanische Packetfahrt Aktien Gesellschaft, Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft, William G. Sickel, and Henry H. Garvan:

The Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft, and the Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft, corporations organized and existing under the laws of the Empire of Germany, and William G. Sickel and Henry H. Garvan, now and at all times saving and reserving to themselves respectively all benefit of exception or otherwise which can or may be taken
62 to the errors, uncertainties and imperfections in the Petition herein, and to some or all of the subject matter set forth therein, for Answer to said Petition, or to so much thereof as these

defendants are advised that it is material and necessary that they should answer, respectfully show to this Court as follows:

I.

AS TO OBJECTS OF THE ACTION.

These defendants admit that the Prince Line Limited, Lamport & Holt, and the answering defendants, are respectively engaged in foreign trade and commerce as carriers of cargo between ports in the United States, including the port of New York, and ports in the Republic of Brazil, and that the defendant Lamport & Holt is also engaged in the carriage of passengers between said ports. These defendants deny that in respect of said foreign trade and commerce the defendants herein, or any of them, have been or are now conducting said commerce in violation of the provisions of the Act of Congress, approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," or the Acts amendatory thereof and supplemental thereto. These defendants severally deny that the said commerce, carried on as aforesaid by them between said ports, has been or is conducted otherwise than in a lawful manner.

These defendants have no knowledge of the purpose or object of this proceeding except as the same is disclosed by the Petition.

Except as herein admitted or specifically denied, these defendants deny all the allegations contained in Subdivision I of the Petition.

63

II.

DESCRIPTION OF DEFENDANTS AND OF STEAMSHIP LINES CONDUCTED BY THEM.

1. *The Prince Line.*

These defendants admit the allegations contained in paragraphs (a) and (b) of Subdivision II of the Petition.

These defendants admit that Paul F. Gerhard, Francis J. Zimmerman and Charles E. Gerhard, all residents of East Orange, New Jersey, have, at the times mentioned in the Petition herein, been copartners engaged in business in the City of New York under the firm name of Paul F. Gerhard & Company, and since January, 1908, have acted as general agents of the defendant Prince Line, Limited, in New York, as set forth in paragraph (c) of part 1 of Subdivision II of the Petition and that they have been in charge of the conduct of the company's business and affairs in the port of New York, subject, as these defendants allege upon information and belief, to the direction of the head office of said company in Newcastle-on-Tyne, England.

These defendants admit the allegations contained in paragraph (d) of part 1 of Subdivision II of the Petition, except that, in respect of the residence of said Harry Connor, they are without knowledge or information sufficient to answer thereunto, and, therefore, leave the petitioner to make such proof in respect thereof as it may be advised.

2. *Lamport & Holt Line.*

64 These defendants admit that from a time prior to the year 1907 to the date of the filing of the Petition, Lamport & Holt operated a regular line of steamships upon which they transported freight and passengers for hire between the port of New York and various ports in the Republic of Brazil, and that during part of such time the firm of Busk & Daniels acted as agents in New York of such line.

As to the other allegations contained in part 2 of Subdivision II of the Petition, these defendants are not sufficiently informed to make answer thereunto, and therefore, leave the petitioner to its proof thereof.

These defendants admit that the defendant William Gein has at the times mentioned in the Petition been in the employ of the firm of Busk & Daniels since 1908, but as to his residence these defendants are not sufficiently informed to make answer thereunto, and, therefore, leave the petitioner to its proof thereof.

3. *Hamburg Lines.*

(a) These defendants admit that the defendant Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft is, and at all times mentioned in the Petition was, a corporation duly organized and existing under and by virtue of the laws of the Empire of Germany, with a principal office and place of business at Hamburg, Germany.

(b) These defendants admit that the defendant Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft is, and at all times mentioned in the Petition was, a corporation duly organized and existing under and by virtue of the laws of the Empire of Germany, with a principal office and place of business at Hamburg, Germany.

(c) These defendants further answering say that from
65 some time in or about the year 1907, to the time of the filing of the Petition herein, the two corporations described in paragraphs (a) and (b) of part 3 of Subdivision II of the Petition respectively owned and operated a regular line of steamships which were engaged in the earlier years of said period in carrying passengers and freight, and in the latter years thereof, to the filing of the Petition herein, in carrying freight only from the Port and Southern District of New York to ports in the Republic of Brazil and from such Brazilian ports to the Port and Southern District of New

York, which lines so operated by the corporate defendants were known, and are still known, as the "Hamburg Lines," but these defendants deny that either of said corporations owned or own any interest in the ships of the other so engaged in such trade and commerce.

Except as herein admitted, these defendants deny the allegations contained in paragraph (c) of Subdivision II of the Petition.

(d) These defendants admit the allegations contained in paragraph (d) of part 3 of Subdivision II of the Petition.

(e) These defendants admit that Paul Gottheil, Thomas A. Sparks, Wilhelm Voelkens, H. W. Voelkens and W. L. Walter have been at the times mentioned in the Petition, and still are, co-partners, doing business in the City, State and Southern District of New York, under the firm name and style of Funch, Edye & Company, with an office and place of business in the City and Southern District of New York, and say that at all such times said firm has acted as the general freight agents of the Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft and also of the Hamburg-Südamerikanische
66 Dampfschifffahrts-Gesellschaft, and have been, and are, as such agents, in charge of the conduct of the business and affairs of said defendants at the Port and Southern District of New York, in connection with their business, trade and commerce, as aforesaid.

(f) These defendants admit the allegations contained in paragraph (f) of part 3 of Subdivision II of the Petition, that Robert H. Goodwin, Clement H. Betts and Henry H. Garvan are residents of the City, State and Southern District of New York, and that the defendants, Robert H. Goodwin and Clement H. Betts, have, at the times mentioned in the Petition, been employees of the co-partnership defendant Funch, Edye & Company aforesaid; but these defendants deny that said Henry H. Garvan has been during such times and now is an employee of the said co-partnership of Funch, Edye & Company, but, on the contrary, say that said Garvan has been during said time, and now is, an employee of the defendant Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft.

And these defendants further say that since February 29th, 1912, the defendant Henry H. Garvan has had no relation to or connection whatever with the agreements, conferences or matters referred to in the Petition or any thereof.

III.

DESCRIPTION OF TRAFFIC BETWEEN THE UNITED STATES AND BRAZIL.

Answering Subdivision III of the Petition, these defendants admit that the only practicable routes for the carriage of passengers and freight from the United States to the Republic of Brazil,
67 and from the Republic of Brazil to the United States, are all-water routes on the Atlantic Ocean, between ports on the Atlantic Coast and the Gulf of Mexico in the United States, and

ports on the Atlantic Coast in Brazil, and that substantially all of the commerce of the United States with Brazil, both ways, is carried by steamships over such routes. They further admit that some of the defendant carriers, during a part of the time mentioned in the Petition, were engaged in the carriage of cargo and passengers over such routes, but say that for some time prior to the filing of the Petition these defandants have not nor has the said Prince Line, Limited, been engaged in the carriage of passengers in said commerce. And these defendants admit that all the lines of said defendants have been operated with relatively regular dates for the departure of their ships from the port of New York to Brazilian ports, and from Brazilian ports to the port of New York, return voyages being occasionally made to the port of New Orleans. These defendants respectively further admit that, to the best of their knowledge and belief, no port on the Atlantic Coast of the United States, except New York, has been regularly reached by any line running to or from Brazil.

These defendants deny all the allegations contained in said Subdivision III of the Petition not herein specifically admitted.

IV.

DENIAL THAT THE DEFENDANTS ARE ENGAGED IN A COMBINATION OR CONSPIRACY.

These defendants deny all of the allegations contained in Subdivision IV of the Petition.

68

V.

DENIAL OF ALLEGED MEANS AND METHODS CLAIMED TO HAVE BEEN USED TO ACCOMPLISH THE OBJECTS OF COMBINATION AND CONSPIRACY.

These defendants deny that in order to restrain trade and effect a monopoly in the said foreign commerce of the United States, the defendants have adopted measures to eliminate competition among themselves or to destroy and prevent the competition of others.

1. *Traffic agreement.*

These defendants admit that on or about February 14, 1908, they entered into a written agreement, at London, England, with the other defendant carriers. They admit that Exhibit 1 annexed to the Petition is a substantially correct copy of said agreement, but, for the precise terms thereof, these defendants crave leave to refer to the original agreement. They admit that the defendant carriers have been and now are cooperating with one another to carry into effect certain of the terms and provisions of said agreement; but they deny

that all of the terms thereof became, or were at the time of the bringing of this suit, or at any time, effective, and these defendants deny that they or any of the defendants herein have cooperated with one another under the said agreement in furtherance of, or pursuant to, any unlawful combination or conspiracy to restrain said trade and commerce or to monopolize the same or any thereof; but, on the contrary, these defendants say that the said agreement was entered into to enable the parties thereto more efficiently to promote, carry on, and increase said trade and commerce.

69 2. *Pooling agreement of 1908.*

These defendants admit that on or about July 8, 1908, they respectively entered into a written agreement with certain other of the defendants named in the Petition, of which a copy, believed to be substantially correct, is attached to the Petition marked Exhibit 2, and that thereafter, until June 30, 1909, the parties to the said agreement co-operated with one another to carry its terms and provisions into effect. These defendants further admit that the said agreement was terminated, in accordance with the provisions thereof, by notice given by the defendant, Lamport & Holt, as alleged in the Petition, and that Exhibit 3 attached to the Petition is a copy of the notice by which said agreement was terminated. For the terms and provisions of said agreement, these defendants crave leave to refer to the original thereof.

These defendants, respectively, deny the allegations contained in Paragraph 2 of Subdivision V of the Petition not herein expressly admitted.

3. *Pooling agreement of 1909.*

Answering Paragraph 3 of Subdivision V of the Petition these defendants deny each and every allegation contained in said Paragraph 3 of said Subdivision V of the Petition.

4. *London Conference.*

Upon information and belief, these defendants deny the allegations contained in Paragraph 4 of Subdivision V of the Petition.

5. *New York Conference.*

70 These defendants admit that during the principal part of the period from February 14, 1908, to the date of the filing of the Petition, representatives of the defendants Prince Line, Lamport & Holt Line and the "Hamburg Lines" held weekly meetings in New York, under the name of the "New York Conference," and that at various times the defendants mentioned in Paragraph 5 of Subdivision V of the Petition (except Arthur Cook) attended

such meetings in an office jointly maintained by the carrier defendants in the Produce Exchange Building, in the City, State and Southern District of New York. They admit that at such meetings, representatives of the carrier defendants, as agents for such defendants, and within limits prescribed by their respective principals, agreed from time to time on rates to be charged on certain staple articles outward bound from New York. They admit that the business and affairs of said lines were conducted so as to conform to and carry into operation the freight rates agreed to be charged, so far as adopted by the carrier defendants. They deny that the persons present at such meetings agreed upon and authorized the making of contracts by the several lines, parties thereto, with particular shippers, whereby such lines were authorized to grant preferential rates to such shippers. They deny that preferential rates were granted by any of the defendant lines to any shippers.

Except as herein expressly admitted or specifically denied, these defendants deny the allegations contained in said Paragraph 5 of Subdivision V of the Petition.

6. *Alleged rebates.*

These defendants deny each and every allegation contained in Paragraph 6 of Subdivision V of the Petition.

71 7. *Refusals to carry.*

These defendants deny each and every allegation contained in Paragraph 7 of Subdivision V of the Petition.

VI.

DENIAL OF RESTRAINT OF TRADE AND VIRTUAL MONOPOLY.

These defendants, answering Subdivision VI of the Petition, deny that by reason of said agreement (Exhibit 1 annexed to the Petition), or for any reason, the defendant steamship companies have restrained trade by eliminating competition among themselves and destroying and rendering impracticable the competition of others; and they deny that they have acquired or possess a virtual or any monopoly of that portion of the foreign trade and commerce of the United States consisting of the transportation of passengers and freight, or of freight alone, for hire between ports of the United States on the Atlantic Coast and the Mexican Gulf and ports in the Republic of Brazil.

These defendants, further answering, admit that the Lloyd Brazileiro is an independent line, operating steamships between Brazilian ports and the port of New York in competition with the steamship companies defendants in this suit; but these defendants deny that the said Lloyd Brazileiro is either a small or a weak line, and

they say, on the contrary, that said Lloyd Brazileiro is a powerful line, actively and successfully engaged in the coastwise trade of the Republic of Brazil, from which all vessels, other than those of the Republic of Brazil, are excluded; and that the said Lloyd Brazileiro is heavily subsidized by the Republic of Brazil, in respect of
72 said coastwise trade, and also receives an annual general subsidy from Brazil of a large amount; that it is an active, aggressive and efficient competitor with the steamship companies made defendants hereto, and transports in said commerce similar cargoes to those carried by the ships of said defendant companies at differential rates slightly below the rates charged by the defendant lines for the same service.

These defendants further deny that the tonnage of tramp steamers and other vessels engaged in the commerce of the United States with Brazil, described in the Petition, is either small or diminishing, and say, on the contrary, upon information and belief, that the same is large and increasing, and they further say upon information and belief that the greater portion of the trade and commerce of the United States with the Republic of Brazil, described in the Petition, is carried by competitors of the defendants in this suit.

Further answering, these defendants say that the agreement (Exhibit 1 annexed to the Petition) was entered into by the parties thereto in order to enable them more efficiently to engage in the said commerce and to develop and increase the same, and that the operation by the defendant steamship companies of said lines in accordance with said agreement, in so far as the same was in effect at the time of the filing of the Petition, and for a long time prior thereto, has developed and increased said trade and commerce.

Further answering, these defendants say that the rates fixed by the defendant carriers engaged in such commerce are fixed in competition with, not only other steamship lines engaged in transportation between the United States and the Republic of Brazil, but also in competition with strong and powerful steamship lines sailing from the ports of Great Britain and the Continent of Europe, carrying similar and competitive cargoes.

73 These defendants, further answering, say that the rates charged by them as carriers engaged in such commerce are just and reasonable rates, and are such as to enable American merchants and manufacturers to successfully compete in said commerce with merchants and manufacturers of the same commodities of the United Kingdom of Great Britain and the Continent of Europe.

Except as herein admitted or denied, these defendants deny the allegations contained in Subdivision VI of the Petition.

VII.

These defendants, further answering, say that the said agreement referred to in the Petition and annexed thereto as Exhibit 1, so far

as the same is and for a long time has been effective, is essential to the maintenance of the lines of the defendants and to afford to the merchants and manufacturers of the United States the transportation facilities which they require in said commerce and at reasonable rates.

VIII.

These defendants, further answering, say that the said traffic agreement, referred to in the Petition and set forth and annexed thereto as Exhibit 1, was and is valid under the laws of Great Britain where the same was made, and that, so far as the same was effective within the United States at the date of the filing of the Petition herein, and for a long time prior thereto, the same does not constitute any violation of its laws.

74 PRAYER.

And for as much as these defendants, having fully answered the Petition herein and denied all manner of unlawful combination, conspiracy, monopoly, or attempt to monopolize, with which they are charged by the Petition, and are ready and willing to aver and prove, if there be any other matter in the Petition material or necessary for these defendants to answer, which has not been well and sufficiently answered, admitted, avoided or denied, that the same is not true to the knowledge or belief of these defendants, they respectfully pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

New York, September 25, 1912.

HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT,
By J. P. MEYER,
(Duly authorized).

HAMBURG-SÜDAMERIKANISCHE DAMPFSCHIFFFAHRTS-GESELLSCHAFT,
By CLEMENT H. BETTS,
(Duly authorized).

WILLIAM G. SICKEL,
By J. P. MEYER,
(Duly authorized).

HENRY H. GARVIN,
SPOONER & COTTON,
Solicitors for above named Defendants.

JOHN C. SPOONER,
Of Counsel.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Sep. 30, 1912.

75 In the District Court of the United States, For the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
v.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } In Equity.

To the Honorable Judges of the District Court for the Southern District of New York:

The joint and several answer of the defendants Paul Gotthiel, Thomas A. Sparks, Wilhelm Voelkens, H. W. Voelkens, W. L. Walter, Robert H. Goodwin and Clement H. Betts:

Paul Gottheil, Thomas A. Sparks, Wilhelm Voelkens, H. W. Voelkens, W. L. Walter, Robert H. Goodwin and Clement H. Betts, defendants, now and at all times saving and reserving to themselves respectively all benefit of exception or otherwise which can or may be taken to the errors, uncertainties and imperfections in the Petition herein, and to some or all of the subject matter set forth therein, for Answer to said Petition, or to so much thereof as these de-
76 fendants are advised that it is material and necessary that they should answer, respectively show to this Court as follows:

I.

AS TO OBJECTS OF THE ACTION.

These defendants admit that the Prince Line, Limited, Lamport & Holt, Hamburg-Amerikanische Packetfahrt Aktien Gesellschaft and Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft are respectively engaged in foreign trade and commerce as carriers of cargo between ports in the United States, including the Port of New York, and ports in the Republic of Brazil, and that the defendant Lamport & Holt is also engaged in the carriage of passengers between said ports. These defendants deny that in respect of said foreign trade and commerce, the defendants herein, or any of them, have been or are now conducting said commerce in violation of the provisions of the Act of Congress, approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," or the Acts amendatory thereof and supplemental thereto. These defendants deny that the said commerce, carried on by said corporate defendants as aforesaid, between said ports, has been or is conducted otherwise than in a lawful manner.

These defendants have no knowledge of the purpose or object of this proceeding, except as the same is disclosed by the Petition.

Except as herein admitted or specifically denied, these defendants deny all the allegations contained in Subdivision I of the Petition.

II.

DESCRIPTION OF DEFENDANTS AND OF STEAMSHIP LINES CONDUCTED BY THEM.

1. *The Prince Line.*

These defendants admit the allegations contained in paragraphs (a) and (b) of Subdivision II of the Petition.

These defendants admit that Paul F. Gerhard, Francis J. Zimmerman and Charles E. Gerhard, all residents of East Orange, New Jersey, have, at the times mentioned in the Petition herein, been copartners engaged in business in the City of New York under the firm name of Paul F. Gerhard & Company, and since January, 1908, have acted as general agents of the defendant Prince Line, Limited, in New York, as set forth in paragraph (c) of part 1 of Subdivision II of the Petition and that they have been in charge of the conduct of the company's business and affairs in the port of New York, subject, as these defendants allege upon information and belief, to the direction of the head office of said company in Newcastle-on-Tyne, England.

These defendants admit the allegations contained in paragraph (d) of part 1 of Subdivision II of the Petition, except that, in respect of the residence of said Harry Connor, they are without knowledge or information sufficient to answer thereunto, and, therefore, leave the petitioner to make such proof in respect thereof as it may be advised.

2. *Lamport & Holt Line.*

These defendants admit that from a time prior to the year 1907 to the date of the filing of the Petition, Lamport & Holt operated a regular line of steamships upon which they transported freight and passengers for hire between the port of New York and various ports in the Republic of Brazil, and that during part of such time the firm of Busk & Daniels acted as agents in New York of such line.

As to the other allegations contained in part 2 of Subdivision II of the Petition, these defendants are not sufficiently informed to make answer thereunto, and therefore, leave the petitioner to its proof thereof.

These defendants admit that the defendant William Gein has at the times mentioned in the Petition been in the employ of the firm of Busk & Daniels since 1908, but as to his residence these defendants are not sufficiently informed to make answer thereunto, and, therefore, leave the petitioner to its proof thereof.

3. *Hamburg Lines.*

(a) These defendants admit that the defendant Hamburg-Amerikanische Packet-Gesellschaft is, and at all times mentioned in the Petition was, a corporation duly organized and existing under and

by virtue of the laws of the Empire of Germany, with a principal office and place of business at Hamburg, Germany.

(b) These defendants admit that the defendant Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft is, and at all times mentioned in the Petition was, a corporation duly organized and existing under and by virtue of the laws of the Empire of Germany, with a principal office and place of business at Hamburg, Germany.

(c) These defendants further answering, say that from some time in or about the year 1907, to the time of the filing of the Petition herein, the two corporations described in paragraph (a) and
79 (b) of part 3 of Subdivision II of the Petition respectively owned and operated a regular line of steamships which were engaged in the earlier years of said period, in carrying passengers and freight, and, in the latter years to the filing of the Petition herein, in carrying freight only from the Port and Southern District of New York to ports in the Republic of Brazil and from such Brazilian ports to the Port and Southern District of New York, which lines so operated by the corporate defendants were known, and are still known, as the "Hamburg Lines," but these defendants deny that either of the corporations owned or own any interest in the ships of the other so engaged in such trade and commerce.

Except as herein admitted, these defendants deny the allegations contained in paragraph (c) of Subdivision II of the Petition.

(d) These defendants admit the allegations contained in paragraph (d) of part 3 of Subdivision II of the Petition.

(e) These defendants admit that Paul Gottheil, Thomas A. Sparks, Wilhelm Voelkens, H. W. Voelkens and W. L. Walter have been at the times mentioned in the Petition, and still are, copartners, doing business in the City, State and Southern District of New York, under the firm name and style of Funch, Edye & Company, with an office and place of business in the City and Southern District of New York, and say that at all such times said firm has acted as the general freight agents of the Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft and also of the Hamburg-Südamerikanische Dampschifffahrts-Geselleschaft, and have been, and are, as such agents, in charge of the conduct of the business and affairs of said defendants at the Port and Southern District of New York in connection with their business, trade and commerce, aforesaid.

80 (f) These defendants admit the allegations contained in paragraph (f) of part 3 of Subdivision II of the Petition, that Robert H. Goodwin, Clement H. Betts and Henry H. Garvan are residents of the City, State and Southern District of New York, and that the defendants, Robert H. Goodwin and Clement H. Betts, have, at the times mentioned in the Petition, been employees of the co-partnership defendant Funch, Edye & Company aforesaid but these defendants deny that said Henry H. Garvan has been during such times and now is an employee of the said co-partnership of Funch, Edye & Company, but, on the contrary, say that said Garvan has

been during said time and now is, an employee of the defendant Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft.

And these defendants further say that since February 29th, 1912, the defendant Henry H. Garvan has had no relation to or connection whatever with the agreements, conferences or matters referred to in the Petition or any thereof.

III.

DESCRIPTION OF TRAFFIC BETWEEN THE UNITED STATES AND BRAZIL.

Answering Subdivision III of the Petition, these defendants admit that the only practicable routes for the carriage of passengers and freight from the United States to the Republic of Brazil, and from the Republic of Brazil to the United States, are all-water routes on the Atlantic Ocean, between ports on the Atlantic Coast and the Gulf of Mexico in the United States, and ports on the Atlantic Coast in Brazil, and that substantially all of the commerce of the United
81 States with Brazil, both ways, is carried by steamships over such routes. They further admit that some of the defendant carriers, during a part of the time mentioned in the Petition, were engaged in the carriage of cargo and passengers over such routes, but say that for some time prior to the filing of the Petition these defendants have not, nor has the said Prince Line, Limited, been engaged in the carriage of passengers in said commerce. And these defendants admit that all the lines of said defendants have been operated with relatively regular dates for the departure of their ships from the port of New York to Brazilian ports, and from Brazilian ports to the port of New York, return voyages being occasionally made to the port of New Orleans. These defendants respectively further admit that, to the best of their knowledge and belief, no port on the Atlantic Coast of the United States, except New York, has been regularly reached by any line running to or from Brazil.

These defendants deny all the allegations contained in said Subdivision III of the Petition not herein specifically admitted.

IV.

DENIAL THAT THE DEFENDANTS ARE ENGAGED IN A COMBINATION OR CONSPIRACY.

These defendants deny all of the allegations contained in Subdivision IV of the Petition.

82

V.

DENIAL AS TO ALLEGED MEANS AND METHODS CLAIMED TO HAVE BEEN USED TO ACCOMPLISH THE OBJECTS OF A COMBINATION AND CONSPIRACY.

These defendants deny that in order to restrain trade and effect a monopoly in the above described foreign commerce the defendants have adopted measures to eliminate competition among themselves or to destroy and prevent the competition of others.

1. *As to traffic agreement.*

These defendants are informed that on or about February 14, 1908, in order to enable themselves to more efficiently carry on the trade and commerce between the United States of America and Brazilian ports, the carrier defendants entered into a written agreement at London, England. They are informed that Exhibit 1 annexed to the Petition is a substantially correct copy of said agreement, but, for greater certainty these defendants crave leave to refer to the original agreement, when the same shall be produced. They admit that the defendant carriers have been and now are co-operating with one another to carry into effect certain of the terms and provisions of said agreement, but they deny, on information and belief, that all of the terms thereof have become or are effective. These defendants further deny that the defendants or any of them have co-operated with one another under the said agreement in furtherance of or pursuant to any unlawful combination or conspiracy.

Except as herein admitted or denied, these defendants deny all the allegations contained in Paragraph 1 of Subdivision V of the Petition.

83 2. *As to pooling agreement of* 1908.

These defendants are informed that on or about July 8, 1908, the carrier defendants entered into a written agreement with certain other of the defendants therein named, of which a copy believed to be substantially correct, is attached to the Petition, marked Exhibit 2, and that thereafter until June 30, 1909, the parties to the said agreement and their respective agents cooperated to carry its terms and provisions into effect.

Upon information and belief, these defendants further admit that the said agreement was terminated under the terms of a notice given by the defendant Lamport & Holt, and that Exhibit 3 attached to the Petition is a copy of the notice by which the agreement was terminated. For the terms and provisions of said agreement these defendants crave leave to refer to the original thereof, when the same shall be produced, and they deny the remaining allegations contained in Paragraph 2 of Subdivision V of the Petition.

3. *Alleged pooling agreement of 1909.*

These defendants deny each and every allegation of Paragraph 3 of Subdivision V of the Petition.

4. *London Conference.*

Upon information and belief, these defendants deny the allegations contained in Paragraph 4 of Subdivision V of the Petition.

5. New York Conference.

These defendants admit that during the principal part of the period from February 14, 1908, to the date of the filing of the Petition, representatives of the defendants Prince Line, Lamport
84 & Holt Line and the "Hamburg Lines" held weekly meetings in New York, under the name of the "New York Conference," and that at various times the defendants mentioned in Paragraph 5 of Subdivision V of the Petition (except Arthur Cook) attended such meetings in an office jointly maintained by the carrier defendants in the Produce Exchange Building, in the City, State and Southern District of New York. They admit that at such meetings, representatives of the carrier defendants, as agents for such defendants, and within limits prescribed by their respective principals, agreed from time to time on rates to be charged on certain staple articles outward bound from New York. They admit that the business and affairs of said lines were conducted so as to conform to and carry into operation the freight rates agreed to be charged, so far as adopted by the carrier defendants. They deny that the persons present at such meetings agreed upon and authorized the making of contracts by the several lines, parties thereto, with particular shippers, whereby such lines were authorized to grant preferential rates to such shippers. They deny that preferential rates were granted by any of the defendant lines to any shippers.

Except as herein expressly admitted or specifically denied, these defendants deny the allegations contained in said Paragraph 5 of Subdivision V of the Petition.

6. Alleged rebates.

These defendants deny each and every allegation contained in Paragraph 6 of Subdivision V of the Petition.

7. Refusal to carry.

These defendants deny each and every allegation contained in Paragraph 7 of Subdivision V of the Petition.

85 VI.

DENIAL OF RESTRAINT OF TRADE AND VIRTUAL MONOPOLY.

These defendants, answering Subdivision VI of the Petition, deny that by reason of said agreement (Exhibit 1 annexed to the Petition), or for any reason, the defendant steamship companies have restrained trade by eliminating competition among themselves and destroying and rendering impracticable the competition of others; and they deny that they have acquired or possess a virtual or any monopoly of that portion of the foreign trade and commerce of the United

States consisting of the transportation of passengers and freight, or of freight alone, for hire between ports of the United States on the Atlantic Coast and the Mexican Gulf and ports in the Republic of Brazil.

These defendants, further answering, admit that the Lloyd Brazileiro is an independent line, operating steamships between Brazilian ports and the port of New York in competition with the steamship companies, defendants in this suit; but these defendants deny that the said Lloyd Brazileiro is either a small or a weak line, and they say, on the contrary, that said Lloyd Brazileiro is a powerful line, actively and successfully engaged in the coastwise trade of the Republic of Brazil, from which all vessels, other than those of the Republic of Brazil, are excluded; and that the said Lloyd Brazileiro is heavily subsidized by the Republic of Brazil, in respect to said coastwise trade, and also receives an annual general subsidy from Brazil of a large amount; that it is an active, aggressive and efficient competitor with the steamship companies made defendants hereto,
and transports in said commerce similar cargoes to those car-
86 ried by the ships of said defendant companies at differential
rates slightly below the rates charged by the defendant lines for the same service.

These defendants further deny that the tonnage of tramp steamers and other vessels engaged in the commerce of the United States with Brazil, described in the Petition, is either small or diminishing, and say, on the contrary, upon information and belief, that the same is large and increasing, and they further say, upon information and belief, that the greater portion of the trade and commerce of the United States with the Republic of Brazil, described in the Petition, is carried by competitors of the defendants in this suit.

Further answering, these defendants say, on information and belief, that the agreement (Exhibit 1 annexed to the Petition) was entered into by the parties thereto in order to enable them more efficiently to engage in the said commerce and to develop and increase the same, and that the operation by the defendant steamship companies of said lines in accordance with said agreement, in so far as the same was in effect at the time of the filing of the Petition, and for a long time prior thereto, has developed and increased said trade and commerce.

Further answering, these defendants say that the rates fixed by the defendant carriers engaged in such commerce are fixed in competition with, not only other steamship lines engaged in transportation between the United States and the Republic of Brazil, but also in competition with strong and powerful steamship lines sailing from the ports of Great Britain and the Continent of Europe, carrying similar and competitive cargoes.

These defendants, further answering, say that the rates charged by defendant carriers engaged in such commerce are just and reasonable rates, and are such as to enable American merchants

87 and manufacturers to successfully compete in said commerce with merchants and manufacturers of the same commodities of the United Kingdom of Great Britain and the Continent of Europe.

Except as herein admitted or denied, these defendants deny the allegations contained in Subdivision VI of the Petition.

VII.

These defendants, further answering, say that the said agreement referred to in the Petition and annexed thereto as Exhibit 1, so far as the same is and for a long time has been effective, is essential to the maintenance of the lines of the defendants and to afford to the merchants and manufacturers of the United States the transportation facilities which they require in said commerce and at reasonable rates.

VIII.

These defendants, further answering, say that the said traffic agreement, referred to in the Petition and set forth and annexed thereto as Exhibit 1, was and is valid under the laws of Great Britain where the same was made, and that, so far as the same was effective within the United States at the date of the filing of the Petition herein, and for a long time prior thereto, the same does not constitute any violation of its laws.

IX.

These defendants further answering, allege that none, or any of them, have, at any time, been parties to the agreements set forth in the Petition; that they have had no interest therein as principals; that their sole connection with any business transacted in pursuance of such agreements or otherwise has been as agents employed by the defendant Steamship Companies to secure cargoes to 88 be loaded on board the vessels outward bound, and to attend to the loading thereof, and to the collection of the freight thereon, and to attend to the delivery of the cargoes inward bound and to attend to the collection of freight thereon, for all of which services they have been paid a commission based on the freight handled, and nothing more.

PRAYER.

And for as much as these defendants, having fully answered the Petition herein and denied all manner of unlawful combination, conspiracy, monopoly, or attempt to monopolize, with which they are charged by the Petition, and are ready and willing to aver and prove, if there be any other matter in the Petition material or necessary for these defendants to answer, which has not been well and

sufficiently answered, admitted, avoided or denied, that the same is not true to the knowledge or belief of these defendants, they respectfully pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

New York, September 25, 1912.

PAUL GOTTHEIL,
Per T. ASHLEY SPARKS,
T. ASHLEY SPARKS,
W. L. WALTHER,
H. W. VOLCKENS,
CLEMENT H. BETTS,
WM. VOLCKENS,
Per H. W. VOLCKENS,
ROB'T H. GOODWIN,
Defendants.

SPOONER & COTTON,
Solicitors for above named Defendants.

JOHN C. SPOONER,
Of Counsel.

(Endorsed:) U. S. District Court S. D. of N. Y. Filed Sep. 30, 1912.

89 District Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
against
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } In Equity.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The answer of Lamport & Holt, Limited, to the amended petition of the United States of America herein:

This defendant, for answer to said amended petition, hereinafter called "the petition," or to so much thereof as it is advised that it is material or necessary for it to make answer to, alleges:

I.

DENIAL OF VIOLATION OF ACT OF CONGRESS PASSED JULY 2, 1890.

1. This defendant admits that the Prince Line, Lamport & Holt Line and the Hamburg Lines are engaged in foreign trade
90 and commerce as carriers of passengers and freight between ports in the United States—particularly the port of New York—and ports in the Republic of Brazil. It denies that in respect to said foreign trade and commerce the defendants or any of them are, or ever have been, violating the provisions of the Act of Con-

gress passed July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and the Acts amendatory thereof and supplemental thereto. And it denies that it has any knowledge or information sufficient to form a belief as to the purpose or object of this proceeding except in so far as it may appear from the allegations of the petition.

II.

AS TO THE DESCRIPTION OF THE DEFENDANTS AND THE STEAMSHIP LINES CONDUCTED BY THEM.

2. It admits that at the times mentioned in the petition the Prince Line acted as a carrier of freight between United States and Brazilian ports, and maintained a regular line of steamships; that James Knott of Newcastle-on-Tyne is the manager of said line; and that Paul F. Gerhard & Company are the agents of said line.

3. It admits the allegations contained in subdivision (a) of Paragraph 2 of Article II of the petition.

4. It admits that the defendant Lamport & Holt, Limited, is a British corporation which was organized in 1911; that it maintains an office for the transaction of its business at Liverpool; that after its incorporation it took over the business of the Lamport & Holt Line; and has ever since operated said Line as a carrier of freight and passengers between United States and Brazilian ports, and elsewhere.

91 5. It admits the allegations contained in subdivision (*b*) of Paragraph 2 of Article II of the petition, except that it denies that the firm of Busk & Daniels has been in existence since 1907.

6. It denies that the defendant, William Gein, is a resident of the City, State and Southern District of New York, and it admits that he has been in the employ of the firm of Busk & Daniels since that firm was established in 1908.

7. It admits that at the times mentioned in the petition the Hamburg Lines operated lines of steamships between United States and Brazilian ports, and that the firm of Funch, Edye & Company of New York are the freight agents of said lines.

8. As to the remaining allegations of Article II of the petition it is not sufficiently informed to make answer thereto, and therefore leaves the petitioner to make such proof in relation thereto as it may be advised.

III.

AS TO THE DESCRIPTION OF THE TRAFFIC BETWEEN THE UNITED STATES AND BRAZIL

9. It admits that substantially all of the commerce of *of* the United States of America with the Republic of Brazil is carried by steamships over the routes described in Article III of the petition, which

are the only practicable routes, and that some of the defendant carriers have been engaged in the carriage of freight and passengers over such routes, and have maintained and operated their lines with regular dates so far as practicable for the departure of their
92 ships from New York to Brazilian ports and return, and with no regular service from New Orleans to Brazilian ports, and that no other port on the Atlantic coast of the United States, nor on the Gulf of Mexico, has been regularly reached by any line running to or from Brazil. And it denies each and every other allegation contained in Article III of the petition.

IV.

DENIAL OF COMBINATION AND CONSPIRACY

10. It denies each and every allegation contained in Article IV of the petition.

V.

DENIAL OF USE OF MEANS AND METHODS TO ACCOMPLISH OBJECTS OF A COMBINATION OR CONSPIRACY

11. It denies that in order to restrain trade and effect a monopoly in the foreign commerce described in the petition the defendants have ever adopted measures to eliminate, destroy or prevent competition among themselves or on the part of others.

12. *As to traffic agreement.*

This defendant admits that on or about February 14, 1908, at London, the persons and corporations mentioned in Paragraph 1 of Article V of the petition entered into a written agreement, whereof a copy which it believes to be substantially correct is annexed to the petition and marked Exhibit 1, but for the terms of said agreement it begs leave to refer to the original thereof. It admits that the defendant carriers have co-operated to carry into effect certain of the terms and provisions of said agreement, but it denies that it or any of the defendants has done so in furtherance of or pursuant to any unlawful combination or conspiracy whatsoever.

93 13. *As to pooling agreement of 1908.*

This defendant admits that on or about July 8, 1908, the persons and corporations mentioned in Paragraph 2 of Article V of the petition entered into a written agreement, whereof a copy which it believes to be substantially correct is attached to the petition and marked Exhibit 2, but for the terms of said agreement it begs leave to refer to the original thereof. It admits that for a time the

defendant carriers co-operated to carry into effect the terms and provisions of said pooling agreement, and that said agreement was terminated by notice given by Lamport & Holt, a copy of which is attached to the petition and marked Exhibit 3. And it denies that it or any of the defendants acted in furtherance of or pursuant to any unlawful combination or conspiracy whatsoever.

14. *As to pooling agreement of 1909.*

This defendant denies each and every allegation contained in Paragraph 3 of Article V of the petition.

15. *As to London Conference.*

This defendant denies, upon information and belief, each and every allegation contained in Paragraph 4 of Article V of the petition.

16. *As to New York Conference.*

This defendant admits that for the greater part of the period from February 14, 1908, to the date of the filing of this petition, representatives of the Prince Line, Lamport & Holt Line and Hamburg Lines have held weekly meetings in New York under the name of the "New York Conference," and that the defendants named in Paragraph 5 of Article V of the petition, with the exception of Arthur Cook, have attended said meetings from time to time,
94 and that said meetings have been held at an office jointly maintained by the carrier defendants in the Produce Exchange Building in the City of New York, under the management of one Goodwin, as secretary, who kept records of the proceedings thereof. It denies that such meetings were held in furtherance of or pursuant to or to effect the object of any unlawful combination or conspiracy whatsoever. It admits that at the meetings of the New York Conference those present acting as agents for the carrier defendants have from time to time agreed upon rates of freight to be charged on staples outward from New York. It admits that it has conducted its business and affairs so as to conform to and carry out the plans adopted at such conferences. It denies that at any of such meetings of the New York Conference the defendants then and there present ever agreed upon or authorized the making of contracts with particular shippers whereby any lines whatsoever were authorized to grant preferential rates to such shippers and it denies that any preferential rates have been given to shippers by any of the defendants.

17. *As to alleged rebates.*

It denies each and every allegation contained in Paragraph 6 of Article V of the petition.

18. *As to alleged refusals to carry.*

It denies each and every allegation contained in Paragraph 7 of Article V of the petition.

19. *Denial of restraint and monopoly.*

It denies each and every allegation contained in Article VI of the petition.

20. Further answering, this defendant says that the pur-
95 pose and object of the agreements entered into by certain of the defendants was to establish regular sailings and fix and maintain steady and reasonable rates to the mutual advantage of merchants and shippers and of the Steamship Lines themselves. That the rates fixed between American and Brazilian ports are fair and reasonable; are lower than the rates current twenty years ago when the United States & Brazil Steamship Company was operating a line of steamships between the United States and Brazilian ports; and are subject to the active and effective competition of Lloyd Brazileiro, a powerful company which maintains a line of steamships subsidized by the Brazilian Government, and in which the Brazilian Government has a financial interest, as this defendant is informed; further that the rates from the United States to Brazilian ports are not higher than the current rates from Europe to Brazil, so that American merchants and shippers are able to compete successfully with European houses in the export trade.

That this defendant has never attempted to create a monopoly and it would be impossible for it, or any others, to create a monopoly in the ocean traffic between ports of the United States and ports in Brazil. That a large part of the trade between the United States and Brazil is carried in bottoms not owned or controlled by any of the defendants.

That regular sailings, standard and reasonable rates, and the right to interchange contracts, so that if a steamship of one line cannot take a merchant's goods, a steamship of another line may carry out his contract, are of the greatest advantage to the merchants and manufacturers of the United States and tend to develop and increase trade between the United States and Brazil.

That all the agreements set forth in the petition are valid under the law of the place where they were made, as well as under
96 the laws of the United States, and that all the acts done by this defendant are valid and lawful, and not in violation of any statute or law of the United States.

Further, that this defendant was not a party to the agreements set forth in the petition.

21. And this defendant now, having fully answered the petition herein, denies all and all manner of unlawful contract, combination,

conspiracy, monopolizing or attempt to monopolize, wherewith it is charged by said petition; without this that if there is any other matter, cause or thing in the petition contained material or necessary for this defendant to make answer to and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs in this behalf most wrongfully sustained.

LAMPORT & HOLT, LIMITED,
By BUSK & DANIELS, *Agents*,
By LORENZO DANIELS.

BURLINGHAM, MONTGOMERY & BEECHER,
Solicitors for said defendant.

CHARLES C. BURLINGHAM,
NORMAN B. BEECHER,
Of counsel.

(8703M)

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Dec. 27, 1912.

97 ORDER FOR FILING AMENDED PETITION.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PETITIONER,
versus
PRINCE LINE AND OTHERS, DEFENDANTS. } Equity No. 9,201.

It appearing in the above entitled cause that an amendment to the petition herein is necessary to bring in an additional party, defendant, now on motion of Henry A. Wise, Solicitor for the Petitioner, and the affidavit of Stanley D. Montgomery, and by consent of Messrs. Burlingham, Montgomery and Beecher, Messrs. Convers & Kirlin, and Messrs. Spooner and Cotton, Solicitors for the several defendants herein, it is

Ordered that the affidavit of Stanley D. Montgomery, be received and filed in said cause:

That a part of Paragraph "2" of Subdivision "II" Pages 4 and 5, of the original Petition be, and the same hereby is, amended in accordance with the facts set forth in said affidavit of Stanley D. Montgomery to read as follows:—

"(a) Walter Holland, George Melly, Arthur Cook and C. Syndney Jones, all residents of Liverpool, England, for some time prior to

the year 1907, to some time in the year 1911, were co-partners, trading and doing business under the firm name and style of Lamport & Holt, and as such co-partners owned and operated a regular line of steamships upon which they transported passengers and freight for hire from the Port of New York, in the Southern District of New York to various ports in Brazil, and from said Brazilian Ports to the said Port of New York and the Port of New Orleans in the State of Louisiana, said Line being known as "Lamport
98 & Holt Line," by which name it will hereinafter be referred to.

"(a–1) Defendant, Lamport & Holt, Limited, is a corporation which was organized some time during the year, 1911 under and by virtue of the laws of the Kingdom of Great Britain, and maintains an office for the transaction of its business at Liverpool, England; the exact date of its incorporation to this petitioner is unknown. Immediately after its organization said corporation purchased from the co-partnership of Lamport & Holt, heretofore described, all of the property, rights and interest of said co-partnership in and relating to the Lamport & Holt Line and thereupon became and has continued to be and now is the sole proprietor thereof, operating the said Line as a common carrier of freight and passengers in the area heretofore described.

"(b) Defendants Frederick T. Busk, and Lorenzo Daniels, both of whom are residents of the City, State and Southern District of New York, since some time in the year, 1907, the exact date being unknown to your petitioner, have been co-partners, trading and doing business under the firm name and style of Busk & Daniels, with an office and place of business in the City and Southern District of New York, at all times since the organization of said last co-partnership the said defendants Frederick T. Busk and Lorenzo Daniels have been the general agents of the respective proprietors of the Lamport & Holt Line and as such general agents have been in the conduct of all of the business and affairs of said Line at the Port and Southern District of New York."

That the answers heretofore filed on behalf of the several defendants herein be taken as full and complete answers to the amended petition as they were to the original petition in said cause, and it is further

Ordered that the additional defendant, Lamport & Holt, Limited, answer the said petition within 20 days from the date hereof.

Dated New York City, December 12th, 1912.

GEO. C. HOLT,
Judge.

99 We, the undersigned, Solicitors for the several defendants herein, hereby consent to the amendment of the original Petition herein, in accordance with the facts set forth in the affidavit

of Stanley D. Montgomery, and waive service of such amended petition.

SPOONER & COTTON,
Solicitors for defendants, Paul Gotthiel, Thomas A. Sparks, Wilhelm Voelkens, H. W. Voelkens, W. L. Walter, Robert H. Goodwin, Clement H. Betts, Hamburg Amerikanische Packetfahrt Aktien-Gesselschaft, William G. Sickel and Henry H. Garvan.

CONVERS & KIRLIN,
Solicitors for defendants, Prince Line Limited, Paul F. Gerhard & Company, and Harry Connors.

BURLINGHAM, MONTGOMERY & BEECHER,
Solicitors for defendants Frederick T. Busk, Lorenzo Daniels and William Gein.

(Endorsed) U. S. District Court, S. D. of N. Y. Filed Dec. 17, 1912.

100 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PETITIONER,
versus
PRINCE LINE ET AL., DEFENDANTS.
} Equity No. 9,201.

UNITED STATES OF AMERICA SOUTHERN DISTRICT OF NEW YORK, *ss:*

STANLEY D. MONTGOMERY, being duly sworn, on oath, deposes and says:

Whereas the original petition in the above entitled cause, a part of Subdivision "II," Paragraph "2," at Pages 4 and 5, among other things alleges:

"(a) Walter Holland, George Melly, Arthur Cook and C. Sydney Jones, all of whom are residents of the City of Liverpool, England, have been co-partners doing business under the firm name and style of Lamport & Holt, and at all such times said co-partners have owned and operated a regular line of steamships upon which they have transported freight and passengers for hire between the port and Southern District of New York and various ports in the Republic of Brazil, and between said Brazilian ports and said port of New York and the port of New Orleans, in the State of Louisiana. This line of steamships is known and will hereinafter be referred to as the 'Lamport & Holt Line.'

"(b) Defendants Frederick T. Busk and Lorenzo Daniels, both of whom are residents of the City, State and Southern District of New York, have at all such times been co-partners doing business in the

City and Southern District of New York under the firm name and style of Busk & Daniels with an office and place of business in the City and Southern District of New York, and at all such times have been the general agents in the City and Southern District of New York of said Lamport & Holt and as such general agents have been in charge of the conduct of all of its business and affairs at the Port and Southern District of New York, in connection with its trade, business and commerce aforesaid."

101 That upon information and belief the foregoing allegations were based upon the best information obtainable at the time the said petition was prepared and filed, but are erroneous in that,—

(a) Walter Holland, George Melly, Arthur Cook and C. Sydney Jones, all residents of Liverpool England for some time prior to the year 1907, to some time in the year 1911, were co-partners, trading and doing business under the firm name and style of Lamport & Holt, and as such co-partners owned and operated a regular line of steamships upon which they transported passengers and freight for hire from the Port of New York, in the Southern District of New York to various ports in Brazil, and from said Brazilian ports to the said Port of New York and the Port of New Orleans in the State of Louisiana, said Line being known as "Lamport & Holt Line", by which name it will hereinafter be referred to.

(a–1) Lamport & Holt, Limited, is a corporation which was organized some time during the year, 1911, under and by virtue of the law of the Kingdom of Great Britain and maintains an office for the transaction of its business at Liverpool, England; the exact date of its incorporation is to this affiant unknown. Immediately after its organization said corporation purchased from the co-partnership of Lamport & Holt, heretofore described, all of the property, rights and interest of said co-partnership in and relating to the Lamport & Holt Line and thereupon became and has continued to be and now is the sole proprietor thereof, operating the said Line as a common carrier of freight and passengers in the area heretofore described.

(b) Defendants Frederick T. Busk, and Lorenzo Daniels, both of whom are residents of the City, State and Southern District of New York since some time in the year, 1907, the exact date being unknown to your petitioner, have been co-partners, trading and doing business under the firm name and style of Busk & Daniels, with an office and place of business in the City and Southern District of New York, at all times since the organization of said last co-partnership the said defendants Frederick T. Busk and Lorenzo Daniels have been the general agents of the respective proprietors of the Lamport & Holt Line and as such general agents have been in the conduct of all of the business and affairs of said Line at the Port and Southern District of New York.

That it is *is* necessary for the proper trial and determination of the issues in this cause to name said corporation, Lamport & Holt,

Limited, as a defendant herein and for the petitioner to amend the petition in accordance with the foregoing facts.

102 Subscribed and sworn to before me this 7th day of December, 1912.

(SEAL.) WALTER R. EATON,
Notary Public, Kings County.

Certificate filed in New York County.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Dec. 17, 1912.

103 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Prince Line, Limited, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

104 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } In Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be

had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Paul F. Gerhard, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

105 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } In Equity No. E 9-201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Francis J. Zimmerman, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

106 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9-201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Charles Z. Gerhard, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

107 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9-201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Harvey Connor, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant: without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain

and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

108 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS.
} Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Frederick T. Busk, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4. 1912.

109 In the United States District Court for the Southern District of New York.

THN UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS.
} Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be

had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Lorenzo Daniels, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendunto, and not herein and hereby well and sufficiently re'lied unto, by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently re'lied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

110 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, William Gein, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

111 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANT. } Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

112 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant

is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

113 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, William G. Sickel, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

114 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be

had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Henry H. Garvan, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

115 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Paul Gottheil, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated, New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

116 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9-201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant Thomas A. Sparks, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be relied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

117 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9-201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Wilhelm Voelkens, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently

replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

118 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS. } Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, H. W. Voelkens, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

119 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, petitioner,
vs.
PRINCE LINE, LIMITED, AND OTHERS, defendants. } Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be

had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, W. L. Walter, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

120 In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, petitioner, *vs.* PRINCE LINE, LIMITED, AND OTHERS, defendants.	Equity No. E 9–201.

This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Robert H. Goodwin, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

121 In the District Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA, PETITIONER, *vs.* PRINCE LINE, LIMITED, AND OTHERS, DEFENDANTS.	Equity No. E 9-201.

This replicant, United States of America, saving and reserving to to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Clement H. Betts, for replication thereunto saith that it doth and will aver, maintain and prove its said petition to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by its said petition it hath already prayed.

HENRY A. WISE,
United States Attorney.

Dated: New York, October 4, 1912.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 4, 1912.

122 OPINION.

United States District Court, Southern District of New York.

Before Lacombe, Coxe, Ward and Rogers, circuit judges.

The United States of America, petitioner, *v.* Prince Line, Limited & others, defendants.

United States of America, petitioner, *v.* American-Asiatic S. S. Co. & others, defendants.

These are suits brought against defendants under the Sherman Anti-Trust Act. The appearances are:

For the U. S.: Ernest E. Baldwin; Stanley D. Montgomery.

For defendants: Budlingham, Montgomery & Beecher; Convers & Kirlin; John C. Spooner, of Counsel.

123 The records are separate, but both causes were heard on the same day and may conveniently be discussed in a single

opinion. In each cause the petition alleges that for some years defendants have been engaged in an unlawful conspiracy to restrain trade and destroy competition in ocean carriage between ports in the United States and specified foreign ports, and to monopolize such trade. The relief prayed is that each of these alleged unlawful combinations be declared illegal, and that certain of their practices in conducting the business of their respective combinations be enjoined.

LACOMBE, C. J.

PETITION AGAINST PRINCE LINE AND OTHERS.

The combination against which this proceeding is directed, composed of two British and two German steamship companies, has been practically dissolved as a result of the European war. In consequence the questions here presented have become largely academic and it seems unnecessary to undertake any exhaustive discussion of the facts. A brief statement of the propositions contended for and of our disposition of them will be sufficient.

The combination, while it existed, was the well-known sort not infrequently found among ocean carriers, where two or more shipowners agree together as to the number of vessels they will operate in a particular trade, as to number of voyages to be made between specified ports, as to dates of sailings, as to exchange of freight
124 to be carried when the vessel of one or another line has her space engaged or it is more convenient to use one vessel instead of another, as to rates of freight etc., etc. The fundamental question is whether what has been done by the parties to the combination has operated an unreasonable restraint of trade, or has resulted in a monopolization of trade between the ports specified within the terms of the Sherman Anti-Trust Act.

Preliminary to that question, however, there is submitted a proposition advanced by the Government to the effect that the later decisions of the Supreme Court, in cases like the U. S. v. Standard Oil Company, 221 U. S. 1, and U. S. v. American Tobacco Company, 221 U. S. 106, have no application in this litigation because the defendants are common carriers. We find no authority in the reports, nothing in the text of the Act, nor in the Congressional proceedings which accompanied its passage to support the proposition that the Act is to have one construction when defendants are manufacturers, merchants or traders and another and different one when they are common carriers. The acts of these defendants are to be considered in the light of the construction which has been given to the Act by the Supreme Court irrespective of their particular vocation.

The commerce affected is that between New York and New Orleans and certain ports in Brazil, coffee mainly this way, products of the United States out. These exports from the United States are in competition with similar exports from Europe to Brazil, an older

trade and a larger one. At the time it was formed the parties
125 were in the trade and handled all the trade there was; no one was frozen out by their combination and there was no greater monopoly than existed before—indeed there is less of a monopoly now than there was then since a new independent carrier, the Lloyd Braziliano has come in as a competitor. Some of these defendants operated, or were in combination with, some of the foreign lines which handled the competing commerce from Europe to Brazil. Their story of the genesis of their combination, here complained of, is this. The object was to give regular and sufficient service at stated intervals, so that there would not be an overplus of vessels one month and a scant supply the next month; to have regular sailing dates known far in advance so that shippers could make firm contracts for future deliveries; to give merchants an opportunity of changing their engagements from one line to another as convenience required; to develop outports and to give an opportunity to low classes of cargo to get regular transportation; to establish u n rates of freight, uniform so far as the several lines were con lthough naturally liable to change from time to time; and to tes so as to meet the European rates, fixed by combir usiness is not regulated by statute. Counsel for t questions these statements on the ground that t ssume "purely altruistic motives." We do not agree; of cour ie object was not altruistic, the defendants wished primarily to make money for themselves; there is no sentiment in business; but they reasoned, no doubt, that if they kept their rates so regulated in coordination with European
126 rates as to give a United States shipper reasonable assurance as to what he had to meet in competition and a fair parity as to rates and also gave him proper and sufficient sailings with opportunity of changing engagements, the trade would be stimulated, would grow more readily than under the old uncertain conditions and with its growth the combination would gather in its share of the financial results. The event seems to have justified their expectations. In the mere initiation and carrying out of the enterprise outlined above we see no unreasonable or abnormal restraint of trade.

It is contended that the rates charged by the combination have been unreasonable. Examination of the testimony does not persuade us to this conclusion. Conditions of carriage on the ocean are peculiar, its waterways are open to all, tramps and chartered vessels may pass from port to port without acquiring franchises or condemning rights of way. In one sense as a witness graphically expressed it, "ocean freights are as unstable as the water itself." Regular rates, normally reasonable, are not to be held unreasonable because at some time and place one or more tramp steamers are willing to cut them deeply rather than sail to their next port in ballast. A test sometimes used when enquiring into reasonableness of rates is the cost of service. Thus tested the evidence indicates that the rates charged by the combination, regulated as they were in co-

ordination with European rates, as a rule covered merely cost of service and a reasonable profit; indeed a small profit for the competing line, which shaded down defendant's rates very little
127 ran frequently at a loss. Testing the rates by comparison with general ocean freights leads to a similar conclusion such increases of rates as there has been from time to time seems to have been entirely normal following the upward movement of general ocean freight rates.

It is contended that the system of rebates adopted by the combination was a restraint of trade. Rebates at a stated percentage were given to exclusive shippers; their payment was deferred so that it could be determined at the close of a rebate period whether the shipment of the concern asking for it had really been exclusive. It is, of course, desirable for a shipper to know in advance what rates he is to be charged; in like manner it is desirable for a carrier to know as definitely as it can what amounts of cargo it may expect it will have to handle in a given period. These rebates were not secret, nor were they confined to a favored few; they were uniform, were open to all and all were invited to avail of them. The arrangement is probably as old as trade itself. One natural result of it would seem to be stability in sailings and service—both desirable for trade—which might not otherwise be maintained.

If the price of a unit of cargo space be assumed to be 50 cents, the 10% rebate brings it down to 45 cents. Since the line has been doing business with the 10% rebate, it must be assumed that (in the case taken as an illustration) 45 cents per unit is remunerative; that it covers cost and a reasonable profit. It does not seem to us, however necessarily to follow that the 45 cents would be re-
128 *re*munerative if it were not coupled with the agreement for exclusive shipments. A line providing regular sailings and undertaking to furnish sufficient space will presumably learn by experience enough of conditions at the several ports at different seasons to enable it to calculate with reasonable accuracy what amount of cargo it may expect from its shippers for any particular sailings. Making provision accordingly the vessel sailing will take her departure with substantially a full cargo. But if when she reaches port, it is discovered that the calculations as to expected cargo were correct but that some of her largest regular shippers had sent their merchandise off the week before by some tramp steamer, the regular vessel will have to sail with much unfilled cargo space. A few experiences of this sort might well involve a loss equal to if not in excess of the 10%. We think the two things, rebate and exclusive shipments, are so closely and normally coupled together that in substance the situation is the same as it is when a lower price per unit is quoted for large shipments than for small ones. Such differentiation of price charged between large and small shipments is not unreasonable. Int. C. C. v. B & O. R. R. 145 U. S. 263.

It is charged that defendants have refused to carry cargo at their own berth rates, when there was unengaged space in their vessels. There is no attempt to prove this against all the defendants. Between one of them and the single shipper who makes the charge there was generated from prior transactions, occurring before the com-
129 bination, a decree of heat, which has probably warped the testimony on both sides as to this refusal. The one side, admitting refusal in a few instances, asserts that there was not unengaged space at the time of refusal, an assertion not necessarily proved false by the vessel's subsequently sailing with some free space; prior engagements may have been cancelled. Witnesses for the shipper admit that their tenders of cargo were in the hope of "making out a case," either for action for treble damages or the initiation of this suit by the United States. The evidence is generally unsatisfactory and it is hard to say where the truth lies, but on the whole we are inclined to condemn such practices by granting an injunction against the combination of defendants and its component members prohibiting refusal to receive cargo offered at their regular rates, unless for good cause shown.

In view of the fact that the logic of events has turned this investigation into an autopsy, instead of a determination of live issues, it seems unnecessary to discuss the persuasiveness of the proofs offered to show that the percentage of outward cargo from the United States carried by defendants grew 51% in 1908 to 54.7% in 1912.

There may be a decree for injunction as indicated supra without costs: in all other respects the bill is dismissed.

PETITION AGAINST AMERICAN-ASIATIC COMPANY.

This is a suit, similar to the one above considered, brought
130 under the Sherman Anti-Trust Act against a combination of the ocean steamship lines running from New York and Boston to ports in the Far East and return. There are eleven corporations defendant, 8 British, 2 U. S. and 1 German. The acts complained of are the usual ones, conferences, agreements, pooling arrangements, regulation of number of vessels employed of ports visited and of sailing dates, regulation of rates, provisions for rebates, not secret but open to all and uniform, etc. etc. All of these or some of them, it is contended, constitute a restraint of trade and an attempt to monopolize under the Act. From a study of the multitudinous decisions, not always harmonious, construing this Act the conclusion is reached that a violation of the Act is not made out by theories of what will be the result upon trade and commerce of agreements entered into by defendants, or upon presumptions as to what may have been done under such agreements. Some actual unreasonable interference with the natural course of trade must be shown by proof.

In most, if not in all, cases of this character, many of the witnesses called by the Government necessarily come from the offices of the defendants. From them only can it be best established what agreements were made and what action under such agreements was taken by the parties thereto. In all cases to which attention has been called, however, this testimony is supplemented by other evidence given by witnesses who complain of some injury: some one asserts that the rates charged him are excessive or that his business has been in
131 some way interfered with or harassed or hampered by defendant's conduct.

No such witness has appeared in this case: no shipowner, no shipper or consignee, no manufacturer, merchant or trader, large or small, in the United States or in the Far East is here with any complaint. Persons engaged in the trade which, it is alleged, is restrained sit mute; every one seems to be reasonably well satisfied with existing conditions except the Government, which contends that the agreements themselves, carried out according to their terms, constitute a violation of the Act, i. e. (as it is now construed) that they evidence an "unreasonable restraint of trade." It further suggests as a reason for dissolving the combination that when the Panama Canal is in full operation "there is no reason to suppose that traffic through (it) would escape the domination of defendants, if they were able to control it."

When from carriers and former carriers and prospective carriers of merchandise between the specified ports, and from persons interested in the manufacture, transportation, sale and purchase of such merchandise there comes no complaint, it seems a fair inference that whatever restraints may have resulted from defendant's combination and conduct are merely the usual, normal and reasonable restraints against which it has been held the Sherman Act is not directed.

Defendant's Conference Agreement contains a provision for "fighting ships." If there were evidence that any steps had ever been taken towards putting one on, we should be inclined to grant an injunction similar to the one we granted in U. S. v. Hamburg
132 American Company et al. F. R.; but since there is no such evidence in this case, we see no reason for granting that relief.

The bill is dismissed as to all the defendants.

All concur.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Feb. 3, 1915.

133 FINAL DECREE.

At a Stated Term of the United States District Court held in and for the Southern District of New York, at the United States Court House and Post Office Building, Borough of Manhattan, City of New York, on the 17th day of March, 1915.

Present: Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Hon. Henry G. Ward, Hon. Henry Wade Rogers, Circuit Judges.

UNITED STATES OF AMERICA, petitioner, *vs.* PRINCE LINE, LIMITED, ET AL., defendants.	In Equity. No. E 9–201.

The United States of America having filed its petition herein on the 5th day of June, 1912, and the defendants Prince Line, Limited, Paul F. Gerhard, Charles Z. Gerhard, Francis J. Zimmermann, Harry Connor, Hamburg-Amerikanische Packetfahrt Aktien-Gesellshaft, Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft, William G. Sickel, Henry H. Garvan, Paul Gotthiel, Thomas A. Sparks, Wilhelm Voelkens, W. H. Voelkens, W. L. Walter, Robert H. Goodwin, Clement H. Betts, Lamport & Holt, Limited, Frederick T. Busk, Lorenzo Daniels and William Gein, having duly appeared and answered herein;

Now, therefore, comes the United States of America, by H. Snowden Marshall, Esq., United States Attorney for the Southern District of New York, and Ernest E. Baldwin and Stanley D. Montgomery, Special Assistants to the United States Attorney General, and come also the defendants by their solicitors, Convers & Kirlin,
134 Spooner & Cotton, Burlingham, Montgomery & Beecher, and the said cause having duly come on to be heard before the Hon. E. Henry Lacombe, Alfred C. Coxe, Henry H. Ward and Henry Wade Rogers on the pleadings and proof, and the petitioner having moved the Court for an injunction in accordance with the prayer of the petition;

And it appearing that defendants Prince Line, Limited and Lamport & Holt, Limited, have upon occasions refused to receive lawful cargo tendered at regular rates and that, although no such refusal by the defendants Hamburg-American Line and Hamburg South American Line, their officers, agents and employees is proved, said last named corporations were parties to the combination against which this suit was directed;

It is hereby ordered, adjudged and decreed:

1. That all and singular the defendants in the above combination, their agents, servants and employees, and all persons acting under or in behalf of them, be and they hereby are enjoined, restrained and prohibited from refusing to receive for transportation any lawful cargo or merchandise, from the United States to Brazil, or from Brazil to the United States, offered or tendered to any of them by any shipper at the regular rates obtaining at the time, applicable to all shippers; and are enjoined, restrained and prohibited from combining, conspiring or agreeing to refuse to receive and transport any cargo or merchandise for shipment offered by any shipper at any port served by the conference, at their regular rates.

2. As to all other prayers for relief the petition is dismissed, without costs to either side.

Dated March 17th, 1915.

E. HENRY LACOMBE.
ALFRED C. COXE.
H. G. WARD.
HENRY WADE ROGERS.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 18, 1915.

135 AMENDED FINAL DECREE.

At a Stated Term of the United States District Court held in and for the Southern District of New York, at the United States Court House and Post Office Building, Borough of Manhattan, City of New York, on the 17th day of May, 1915.

Present: Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Hon. Henry G. Ward, Hon. Henry Wade Rogers, Circuit Judges.

UNITED STATES OF AMERICA, PETITIONER,
against
PRINCE LINE, LIMITED, ET AL., DEFENDANTS. } In Equity No. 9–201.

The United States of America having filed its petition herein on the 5th day of June, 1912, and the defendants Prince Line, Limited, Paul F. Gerhard, Charles Z. Gerhard, Francis J. Zimmermann, Harry Connor, Hamburg-Amerikanische Packet-fahrt Aktien-Gesellshaft, Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft, William G. Sickel, Henry H. Garvan, Paul Gottheil, Thomas A. Sparks, Wilhelm Voelkens, W. H. Voelkens, W. L. Walter, Robert H. Goodwin, Clement H. Betts, Lamport & Holt, Limited, Frederick T. Busk, Lorenzo Daniels and William Gein, having duly appeared and answered herein,

Now, therefore, comes the United States of America, by H. Sowden Marshall, Esq., United States Attorney for the Southern District of New York, and Ernest E. Baldwin and Stanley D. Montgomery, Special Assistants to the Attorney General, and comes also the
136 defendants by their solicitors, Convers & Kirlin, Spooner & Cotton, Burlingham, Montgomery & Beecher, and the said cause having duly come on to be heard before the Hon. E. Henry Lacombe, Alfred C. Coxe, Henry G. Ward and Henry Wade Rogers, on the pleadings and proof, and the petitioner having moved the Court for an injunction in accordance with the prayer of the petition;

It is hereby ordered, adjudged and decreed:

1. That all and singular the defendants in the above combination, their agents, servants and employees, and all persons acting under or in behalf of them be and they hereby are enjoined, restrained and prohibited from refusing to receive for transportation unless for good cause any lawful cargo or merchandise from the United States to Brazil, or from Brazil to the United States, offered or tendered to any of them by any shipper at the regular rates obtaining at the

time, applicable to all shippers; and are enjoined, restrained and prohibited from combining, conspiring or agreeing to refuse unless for good cause to receive and transport any cargo or merchandise for shipment offered by any shipper at any port served by the conference, at their regular rates and in the order in which the same shall be offered for shipment.

2. As to all other prayers for relief the petition is dismissed, without costs to either side.

Dated New York, May 17th, 1915.

E. HENRY LACOMBE.
ALFRED C. COXE.
H. G. WARD.
HENRY WADE ROGERS.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed May 17, 1915.

137 NOTICE OF APPEAL.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, ET AL., DEFENDANTS.
} In Equity. 9-201.

SIRS: Please take notice that we will present to the Judges of the Circuit Court of Appeals, sitting as the Expedition District Court, at the Chambers of Judge Lacombe, United States Court House and Post Office Building, Borough of Manhattan, New York City, on the 24th day of May, 1915, at 10.15 o'clock a. m., the foregoing petition for appeal for the allowance thereof.

Dated New York, May 21st, 1915.

Yours etc.,

H. SNOWDEN MARSHALL,
U. S. Attorney,
Office and P. O. Address, Room 202, U. S. Court House and Post Office Building, Borough of Manhattan, New York City.

ERNEST E. BALDWIN,
Special Assistant to Attorney General,
Office and P. O. Address, 42 Broadway, Manhattan Borough, New York City,
Solicitors for Petitioner.

To

CONVERS & KIRLIN, Esqrs.,
27 William Street, New York City,

SPOONER & COTTON, Esqrs.,
14 Wall Street, New York City,

BURLINGHAM, MONTGOMERY & BEECHER,
29 William Street, New York City,
Solicitors for Defendants.

138 PETITION FOR APPEAL.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, ET AL., DEFENDANTS. } In Equity. 9–201.

To the Honorable Judges of the United States District Court for the Southern District of New York:

Now comes the United States of America, petitioner in the above-entitled case, by its solicitors, H. Snowden Marshall, Esq., United States Attorney for the Southern District of New York, and Ernest E. Baldwin, Esq., Special Assistant to the Attorney General of the United States, and conceiving itself aggrieved by the order and final decree made and entered by the above-named Court in the above-entitled cause on the 17th day of May, 1915, in the manner and instance set forth in its assignments of error filed in the said cause, to which reference is hereby made, does hereby pray an appeal therefrom to the present term of the Supreme Court of the United States.

And the United States further prays that a transcript of the record, proceedings and papers on which the decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States; and it further prays that, pursuant to No. 75 of the Rules and Practice of Equity promulgated by the Supreme Court of the United States, effective February 1st,
139 1913, the testimony may be reproduced in the transcript of the record in the exact words of the witnesses.

H. SNOWDEN MARSHALL,
U. S. Attorney,
Office and Post Office Address, Room 202, U. S. Court House and Post Office Building, Borough of Manhattan, New York City.

ERNEST E. BALDWIN,
Special Assistant to the Attorney General,
Office and Post Office Address, 42 Broadway, Manhattan Borough, New York City, N. Y.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed May 24, 1915.

140 ORDER ALLOWING APPEAL.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, ET AL., DEFENDANTS. } In equity. E 9–201.

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it is hereby

Ordered, adjudged and decreed that an appeal be and hereby is granted and allowed as prayed, and that the Clerk of the above

named Court be and hereby is directed to transmit forthwith to the Supreme Court of the United States a duly authenticated transcript of the records, papers and proceedings, and it is hereby further ordered, adjudged and decreed that the testimony be reproduced in the transcript of the record in the exact words of the witnesses.

Dated May 24th, 1915.

E. HENRY LACOMBE,
Circuit Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed May 24, 1915.

141 NOTICE.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PETITIONER, *vs.* PRINCE LINE, LIMITED, ET AL., DEFENDANTS.	In equity No. E 9–201.

SIRS: Please take notice that we will present to the Judges of the Circuit Court sitting as an Expedition Court, at the Chambers of Judge Lacombe, United States Court House and Post Office Building, Borough of Manhattan, City of New York, on the *the* 24th day of May, 1915, at 10.15 o'clock in the forenoon, the assignments of error on behalf of the petitioner, the United States of America, heretofore served upon you in this case subsequent to the entry of the decree of March 17th, 1915; said assignments of error being the same, excepting the following:

"XLI. The Court erred in amending its decree of March 17th, 1915, by adding to the first paragraph of the final decree of May 17th, 1915, the words 'unless for good cause.'"

Dated New York, May 21st, 1915.

Yours, etc.,

H. SNOWDEN MARSHALL,
U. S. Attorney, Office and Post Office Address, Room 202, U. S. Court House and Post Office Building, Borough of Manhattan, New York City.

ERNEST E. BALDWIN,
142 *Special Assistant to the Attorney General, Office and Post Office Address, 42 Broadway, Manhattan Borough, New York City.*

To: *Solicitors for Petitioner.*

CONVERSE & KIRLIN, Esqrs.,
27 William Street, New York City.

SPOONER & COTTON, Esqrs.,
14 Wall Street, New York City.

BURLINGHAM, MONTGOMERY & BEECHER, Esqrs.
29 William Street, New York City.
Solicitors for Defendants.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed May 24, 1915.

143 ASSIGNMENTS OF ERROR.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
against
PRINCE LINE, LIMITED, ET AL, DEFENDANTS. } In Equity, No. E-9/201.

Now comes the United States of America, by H. Snowden Marshall, United States Attorney, and Ernest E. Baldwin, Special Assistant to the Attorney General, solicitors for the petitioner, and files the following assignments of error upon which the United States of America will rely, upon its appeal from the decree made by this Honorable Court on the 17th day of May, 1915, in the above-entitled cause:

I.

That said Court erred in failing to hold and decree that the defendants Prince Line, Limited, Paul F. Gerhard, Charles Z. Gerhard, Francis J. Zimmermann, Harry Connor, Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft, Hamburg-Sudamerikanische Dampfschiffahrts-Gesellschaft, William G. Sickel, Henry H. Garvan, Paul Gottheil, Thomas A. Sparks, Wilhelm Voelkens, W. H. Voelkens, W. L. Walter, Robert H. Goodwin, Clement H. Betts, Lamport & Holt, Limited, Frederick T. Busk, Lorenzo Daniels and William Gein, have been for five years last past continuously and now are engaged in a combination and conspiracy unreasonably and directly to restrain a part of the trade and commerce of the
144 United States with foreign nations, to wit: the republic of Brazil, in the transportation of passengers and freight, contrary to the Act of Congress of July 2, 1890 entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and the acts supplementary thereto and amendatory thereof.

II.

That the said Court erred in failing to hold and decree that the said defendants have been and now are engaged in a combination and conspiracy to unreasonably and directly monopolize said trade and commerce of the United States with foreign nations, contrary to the said Acts of Congress.

III.

That the said Court erred in refusing to hold and decree that for five years last past continuously the said defendants have been engaged in the Southern District of New York, in a combination and conspiracy to destroy all competition among and between themselves

in the business of transporting passengers and freight by steamships between ports in the United States and Mid and South Brazil, and particularly between the port of New York, in the Southern District of New York, and said ports in Brazil, and to eliminate, suppress and destroy all competition in such trade and commerce by any and all persons and corporations other than themselves.

IV.

The said Court erred in refusing to hold and decree that at all said times the said defendants have been continuously and now are so combining and conspiring to monopolize, and in fact have and continue now to monopolize said trade and commerce.

145

V.

That the Court erred in refusing to hold and decree that the traffic agreement entered into on or about the 14th of February 1908 (Exhibit 1 of the Petition), is illegal and in violation of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and the acts supplementary thereto and amendatory thereof.

VI.

That the said Court erred in refusing to issue an injunction restraining and prohibiting the defendants and each and every one and all of them, their officers, agents, servants, employees, representatives and attorneys, from doing any act in pursuance or in furtherance of said agreement.

VII.

That the said Court erred in refusing to order the said defendants and each and all of them, to desist and withdraw from all connections with the said agreement.

VIII.

That the said Court erred in refusing to order and compel the defendants Hamburg-Amerikanische Packetfahrt Aktien-Gesellshaft, Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft, Prince Line, Limited, and Lamport & Holt, Limited, to cancel and abate said unlawful contract.

IX.

That the said Court erred in refusing to hold and decree that the pooling agreement made pursuant to the said contract dated the 14th

of February, 1908, between the said defendant steamship lines was during the time it was in force, illegal and in violation of the
146 said acts of Congress, and in refusing to enjoin and restrain the said defendants and each and every one of them from doing any further act or acts in pursuance or in furtherance thereof.

X.

That the said Court erred in refusing to hold and decree that all and any rebates offered and paid in Brazil or elsewhere upon shipments to the United States from Brazil to shippers who agreed to and did confine all their shipments to the Conference Lines herein, or the alied conference Lines, were illegal and void, and were acts done to monopolize the commerce between Brazil and the United States.

XI.

That the said Court erred in refusing to enjoin the defendants and all of them from paying or offering to pay any further rebates to shippers from the said Brazilian ports to the United States under condition that the said shippers should confine all their shipments to the said defendant Lines or some of them.

XII.

That the said Court erred in refusing to enjoin and restrain the said defendants and each and all of them and their agents, and forbidding them from offering or paying any concession, rebate or reduction from the freight charges in any form or guise whatsoever, in consideration or because of shippers forwarding their shipments exclusively over the lines of the defendant or some or any of them.

XIII.

That the said Court erred in refusing to hold and decree that the contracts for shipments from the United States to the said Brazil ports made and entered into by the defendants with shippers
147 in the United States, by and through which concessions from established rates were made to such shippers providing that they agreed to and did confine their shipments for given period of time to the Conference Lines, defendants, or some of them were illegal and in violation of said Acts of Congress.

XIV.

That the said Court erred in refusing to enjoin and prohibit the defendants and each and all of them from agreeing, combining and conspiring and acting together to establish and maintain rules, regu-

lations and rates for carrying freight upon the several steamships operated by the defendants or any of them between ports of the United States and ports of the Republic of Brazil, and from entering into or continuing in or doing anything in aid of any combination, association or contract growing out of or a part of the said agreement to deprive individuals, firms or corporations shipping freight between ports in the United States and said Brazil ports of such facilities and rates for freight as might be afforded by free and unrestrained competition among the said defendant steamship lines or any of them.

XV.

That the said Court erred in refusing to cancel said agreement entered into February 14, 1908 (Exhibit 1 of Petition) and in failing to enjoin and cancel the terms thereof.

XVI.

That the said Court erred in refusing to enjoin and prohibit the defendant steamship companies and any of them from establishing any pooling system under and pursuant to the said agreement of February 14th, 1908, or any other agreement of like character and scope.

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XVII.

That the said Court erred in refusing to hold and decree that the said defendants by means of the said agreement and the combination and conspiracy in which they were engaged, had monopolized the business between the United States and Mid and South Brazil by means of the promise and payment of deferred rebates inward, and concessions from regular rates outward, to shippers who would make contracts for given periods of time, to make all their shipments over the lines of the defendant steamship companies or some of them.

XVIII.

That the said Court erred in refusing to hold and decree that the fixing of rates from the United States to said Brazil ports, and from said Brazil ports to the United States, in Conference by agreement, was illegal and in violation of said Acts of Congress.

XIX.

That the said Court erred in refusing to hold and decree that the arbitrary fixing of rates from the United States to said Brazil ports based upon the European Conference rates of tariff, was illegal and in violation of said Acts of Congress.

XX.

That the said Court erred in refusing to hold and decree that the agreement to charge the highest rates on coffee from Brazil to the United States, was in itself a combination and conspiracy to unreasonably restrain trade and commerce in violation of said Acts.

XXI.

149 That the said Court erred in failing to hold and decree that the agreement to charge the highest rates on coffee from Brazil to the United States was in itself a combination and a conspiracy to monopolize and an attempt to monopolize trade and commerce in violation of said Acts.

XXII.

That the said Court erred in refusing to enjoin the defendants from apportioning the sailings which each of the steamship lines defendant should be allot'ed and allowed per annum.

XXIII.

That the said Court erred in refusing to enjoin and restrain the defendants from establishing or attempting to establish or maintain a rebate system, as contemplated and provided under said agreement Exhibit I.

XXIV.

That the said Court erred in refusing to enjoin and restrain the defendants and each and all of them, their officers, servants, employees, attorneys and agents, from entering or clearing any of their ships or vessels at the port of New York or any other port of entry in the United States of America, or any of its possessions, so long as they should continue to maintain or be engaged in any of said unlawful combinations and conspiracies and agreements.

XXV.

That the said Court erred in failing to hold and decree that the defendant steamship lines have entered into a combination and conspiracy to fix and have fixed arbitrary rates for the purpose of controlling and diverting the trade and commerce of the United States, contrary to the said Acts of Congress.

150 XXVI.

That the said Court erred in holding that the said rebate system in force between the Conference Lines on shipments from Brazil to the United States was reasonable.

XXVII.

That the said Court erred in holding that the rates in force during the said period of time from ports in the United States to ports in Brazil were in any sense reasonable.

XXVIII.

That the said Court erred in holding and determining that the reasonableness of the rates actually charged, was in any way determinative of whether the combinations and conspiracies charged in the petition were violative of the said Acts of Congress.

XXIX.

That the said Court erred in refusing to hold and decree that the said defendant steamship lines were parties to a conspiracy to prevent coffee shipments from Brazil moving to the United States, except upon steamers operated by the said defendants, by refusing and threatening to refuse to carry any coffee from Brazil to the United States for any shipper who would not agree to patronize exclusively the lines operated by the said defendants.

XXX.

That the said Court erred in failing to hold and find that the said agreements were made in furtherance of a general combination and conspiracy then subsisting, to which the defendants were parties, which had for its purpose the restraint of trade and commerce between the United States and Brazil in both directions, and the monopolization of said trade and commerce in both directions.

151 XXXI.

That the said Court erred in refusing to hold that the agreement and undertaking and arrangement entered into between the said defendants to refuse to carry coffee from Brazil to the United States for shippers who failed to confine their shipments to lines operated by said defendants, was in and of itself a contract, combination and conspiracy in restraint of the foreign trade and commerce of the United States, and was an attempt to monopolize the said trade and commerce.

XXXIV.

That the said Court erred in refusing to hold and decree that the said defendants unreasonably restrained the foreign commerce of the United States with Brazil in that they prevented and precluded any others from operating and maintaining steamship service for the transportation of freight to Brazil from any of the United States ports, except New York.

XXV.

That the said Court erred in refusing to hold and decree that said defendants by means of the said system of rebates to coffee shippers and by means of the said policy of refusing to carry coffee, except for shippers by their lines exclusively, unreasonable restrained the foreign commerce of the United States with Brazil, in that they prevented others than themselves from establishing and maintaining service for the carriage of freight to Brazil from New Orleans and other Gulf ports.

XXXVI.

That the said Court erred in holding that there was less of a monopoly under the combinations, conspiracies and agreements herein, than existed prior to the time the said agreements, combinations and conspiracies were entered into.

XXXVII.

That the said Court erred in holding that the evidence in
152 the case indicated that the rates charged by the combination as a rule covered merely cost of service and a reasonable profit.

XXXVIII.

The said Court erred in holding that the rebates allowed and granted in any way resulted in establishing stability in sailings and service.

XXXIX.

The said Court erred in holding that rebates and exclusive shipments are so closely and normally coupled together, that in substance the situation brought about is the same as it is when a lower price per unit is quoted for large shipments than for small ones, and that such differentiation of prices charged on large shipments and small shipments is not unreasonable.

XL.

The said Court erred in section three of its decree, in dismissing all other prayers of the petition for relief.

XLI.

The said Court erred in amending its decree of March 17th 1915, by adding to the first paragraph of the final decree of May 17th 1915, the words "unless for good cause."

Wherefore, in order that the foregoing assignments of error may be and appear of record, said petitioner presents the same to the

Court, and prays that such disposition be made thereof as is in accordance with law and the statutes of the United States in such cases made and provided; and said petitioner prays a reversal of said decree so as to bring it within the laws of the United States in such cases made and provided, and that an order may be
153 entered granting said petition and the prayers thereof as to each and every one of said defendants, and such other and further relief to the petitioners as to the Court may seem meet or just in the premises.

Dated New York, May 21st 1915.

H. SNOWDEN MARSHALL,
U. S. Attorney,
Office and Post Office Address, Room 202, U. S. Court House and Post Office Building, Borough of Manhattan, New York City.

ERNEST E. BALDWIN,
Special Assistant to the Attorney General,
Office and Post Office Address, 42 Broadway, Manhattan Borough, New York City, N. Y.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed May 24, 1915.

154 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PETITIONER,
vs.
PRINCE LINE, LIMITED, ET AL., DEFENDANTS,
In Equity, No. E 9/201.
Citation.

By the Honorable E. Henry Lacombe, one of the Circuit Judges sitting in the District Court of the United States for the Southern District of New York in the Second Circuit.

To Prince Line, Limited, Paul F. Gerhard, Charles Z. Gerhard, Francis J. Zimmermann, Harry Connor, Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft, Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft, William G. Sickel, Henry H. Garvan, Paul Gottheil, Thomas A. Sparks, Wilhelm Voelkens, W. H. Voelkens, W. L. Walter, Robert H. Goodwin, Clement H. Betts, Lamport & Holt, Limited, Frederick T. Busk, Lorenzo Daniels and William Gein, greeting.

You are hereby cited and admonished to be and appear before a Supreme Court of the United States to be holden at the City of Washington in the District of Columbia, on the 14th day of June 1915, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, from a judgment and decree made on or about the 17th day of May, 1915, in a certain proceeding wherein the United States is peti-
155 tioner, and the Prince Line, Limited, et al., are defendants, and

therein the United States of America is appellant and you are respondents, to show cause, if any there be, why the final judgment and decree in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above-mentioned, this 24th day of May in the year of our Lord one thousand nine hundred and fifteen and of the independence of the United States one hundred and thirty-ninth.

E. HENRY LACOMBE,
Circuit Judge sitting in the District Court of the United States for the Southern District of New York in the Second Circuit.

156 In Equity, E 9/201.

United States District Court Southern District of New York.

United States District Court, Petitioner, *vs.* Prince Line, Limited, et al., Defendants.

(Original.)
Citation.

ERNEST E. BALDWIN,
Special Assistant to Attorney General,
42 Broadway, New York City.

U. S. District Court, S. D. of N. Y. Filed May 25, 1915.
Received May 25, 1915. Convers & Kirlin.

Due service of the within citation is hereby admitted this 24th day of May, 1915.

SPOONER & COTTON,
Solicitors for Defts.

Copy received May 24, 1915.
BURLINGHAM, MONTGOMERY & BEECHER,
Solicitors for Deft.

United States District Court, Southern District of New York.

THE UNITED STATES OF AMERICA, petitioner,
vs.
PRINCE LINE LIMITED AND OTHERS, defendants.
} In Equity, No. E 9/201.

Acknowledgement is hereby made that service of citation in the above entitled action was made upon us on the 24th day of May, 1915.
Dated, New York, June 17th, 1915.

BURLINGHAM, MONTGOMERY & BEECHER,
Solicitors for Defendants.

CONVERS & KIRLIN,
Solicitors for Defendants Prince Line and Gerhard.

United States District Court, Southern District of New York.

United States of America, Petitioner, *vs.* Prince Line, Limited, defendants.

(Original)
Admission of service of citation.

ERNEST E. BALDWIN,
Special Assistant to the Attorney General,
42 Broadway, New York City.

U. S. District Court, S. D. of N. Y. Filed Jun. 22, 1915.
Office of the clerk Supreme Court U. S. Received Jun. 25, 1915.
Copy received Jun. 18, 1915.

BURLINGHAM, MONTGOMERY & BEECHER.

157 UNITED STATES OF AMERICA,
Southern District of New York, ss:

United States of America, petitioner,
against
Prince Line, Limited, Paul F. Gerhard & Company, Harry Connors, Paul Gottheil, Thomas A. Sparks, William Volckens, H. W. Volckens, W. L. Walther, Robert H. Goodwin, Clement H. Betts, Hamburg-Americanische Packetfahrt Aktien-Gesellschaft, Hamburg-Sudamerikanische Dampfschiffahrts-Gesellschaft, William G. Sickel, Henry H. Garvan, Frederick T. Busk, Lorenzo Daniels and William Gein, defendants.

I, ALEXANDER GILCHRIST, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the seven volumes constituting the transcript of record in the above entitled cause, viz:

Vol. A. Pleadings, Opinion, Decrees and Appeal Papers, p. 1 to 158.
Vol. 1. Testimony for Petitioner, p. 1 to 436.
Vol. 2. Testimony for Petitioner, p. 437 to 822.
Vol. 3. Testimony for Petitioner, p. 823 to 1242.
Vol. 4. Testimony for Petitioner, p. 1243 to 1513.
Vol. 5. Petitioner's Exhibits, p. 1515 to 2152.
Vol. 6. Testimony for Defendants, Petitioner's Testimony in Rebuttal and Defendants' Exhibits, p. 2154 to 2657,
is a correct transcript of the record filed in the said District Court in the above entitled matter.

158 In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 11th day of June in the year of

our Lord one thousand nine hundred and fifteen, and of the Independence of the said United States the one hundred and thirty-ninth.
[SEAL.] ALEX. GILCHRIST, Jr., *Clerk.*

(Indorsement on cover:) United States Supreme Court. United States of America, petitioner, *vs.* Prince Line, Limited, and others, defendants. Transcript of Record: Appeal from the District Court of the United States for the Southern District of New York. Volume A: Pleadings, Opinion, Decrees and Appeal Papers.

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

THE UNITED STATES, APPELLANT,
v.
PRINCE LINE (LIMITED), PAUL F. Gerhard, Charles Z. Gerhard, Francis J. Zimmerman, et al. } No. 169.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO REVERSE THE DECREE OF THE DISTRICT COURT AND TO REMAND THE CASE WITH INSTRUCTIONS TO DISMISS THE PETITION WITHOUT PREJUDICE.

Comes now the United States, by the Solicitor General, and represents as follows:

This is a suit under the Federal Antitrust Act by the United States against a combination composed of two British and two German steamship companies operating between Atlantic and Gulf ports in the United States and ports in Brazil. The charge of combination is founded primarily upon a so-called traffic agreement entered into by and between the defendant steamship companies on February 14, 1908. This agreement provided, amongst other things, (*a*)

for fixing the total number of sailings and apportioning them among defendant lines, (*b*) for a system of rebates to be paid shippers who confined their shipments to members of the combination, and (*c*) for a uniform schedule of rates to be observed in the transportation of freight. (Pet. 7, R. 6, 14.)

The petition was filed on June 5, 1912, and by the time the case was reached for hearing in the District Court the present European war had broken out, which caused the District Court to remark at the outset of its opinion that as a result of that conflict the combination already had been "practically dissolved" and in consequence the questions presented had become "largely academic." (220 Fed. 230, 231.) Nevertheless, the court proceeded to consider and dispose of the case on the merits, observing in conclusion, however: "In view of the fact that the logic of events has turned this investigation into an autopsy, instead of a determination of live issues, it seems unnecessary to discuss the persuasiveness of the proofs," etc. (*Id.* 234.)

The court held, in substance, that the agreement limiting and apportioning sailings, establishing uniform rates for the transportation of freight, and providing for a system of rebates for loyal shippers did not constitute an "unreasonable" restraint of trade, and therefore did not violate the Antitrust Act. The court found, however, that one of the defendants had refused to receive the freight of a particular shipper when there was unengaged space in its vessels, and this practice was condemned. Accordingly a final

decree was entered enjoining the defendants from refusing to receive, unless for good cause, lawful cargo tendered them for transportation between the United States and Brazil, and dismissing the petition in all other respects absolutely. (7 R. 79–80.)

Subsequent to the decision of the lower court herein this court handed down its decision in the case of *United States* v. *Hamburg-American Company et al.*, 239 U. S. 466, which involved a combination of British, Canadian, Russian, German, American, and Dutch steamship companies to control steerage traffic between European and American ports. In that case, as in the case at bar, the decision of the lower court on the merits was in the main adverse to the Government, the ground of decision being the same as in the present case, namely, that the acts complained of did not constitute an "unreasonable" restraint of trade. (216 Fed. 971, 974.) And in that case, as in the case at bar, the court dismissed absolutely the principal prayers of the Government's petition.

This court, after a careful review of the facts and the contentions of the parties, held, (*a*) that, as an inevitable legal consequence springing from the present European war, the case had become moot; (*b*) that this was a matter of which the court might take judicial notice; and (*c*) that it was not the province of the court to pass upon the issues presented because of their want of present actuality. (239 U. S. 466, 475.) But the court recognized the injustice of permitting the decree of the lower court on the merits to stand after the Government, through no

fault of its own, had been deprived of its right to a review and directed that the decree of the lower court be reversed and that the case be remanded with instructions to dismiss the petition without prejudice.

> Coming to consider the question in that light and in view of the nature and character of the conditions which have caused the case to become moot, we are of opinion that the ends of justice exact that the judgment below should not be permitted to stand when without any fault of the Government there is no power to review it upon the merits, but that it should be reversed and the case be remanded to the court below with directions to dismiss the bill without prejudice to the right of the Government in the future to assail any actual contract or combination deemed to offend against the Anti-Trust Act. (*Id.* 478.)

In view of the substantial identity in this regard between the *Hamburg-American* case and the case at bar, it is evident that they should be similarly dealt with. It is therefore moved that the decree of the District Court be reversed and that the case be remanded with instructions to dismiss the petition without prejudice.

JOHN W. DAVIS,
Solicitor General.
G. CARROLL TODD,
Assistant to the Attorney General.

NOVEMBER, 1916.

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